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1 DANIEL C. GIRARD (SBN: 114826)
 2 DENA C. SHARP (SBN: 245869)
 3 ADAM E. POLK (SBN: 273000)
 4 SCOTT M. GRZENCZYK (SBN: 279309)

GIRARD GIBBS LLP

5 601 California Street, 14th Floor
 6 San Francisco, CA 94108
 Telephone: (415) 981-4800
 Facsimile: (415) 981-4846
 Email: dcg@girardgibbs.com

7 *Counsel for Plaintiffs Tiffany Bui*
 8 *and Nicholas Letourneau*

UNITED STATES DISTRICT COURT**NORTHERN DISTRICT OF CALIFORNIA****JCS**

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 11 **TIFFANY BUI and NICHOLAS LETOURNEAU**
 12 **Individually and on Behalf of All Others Similarly**
 13 **Situated,**

CV No: 13 3516**Plaintiff,****CLASS ACTION COMPLAINT****v.****DEMAND FOR JURY TRIAL**

16 **NYK LINE (NORTH AMERICA) INC., NIPPON**
 17 **YUSEN KABUSHIKI KAISHA, WILH.**
 18 **WILHELMSSEN HOLDING ASA, WILH.**
 19 **WILHELMSSEN ASA, MITSUI O.S.K. LINES,**
 20 **LTD., KAWASAKI KISEN KAISHA, LTD., "K"**
 21 **LINE AMERICA, INC., EUKOR CAR**
 22 **CARRIERS INC., WALLENUS WILHELMSSEN**
 23 **LOGISTICS AS, WALLENUS WILHELMSSEN**
 24 **LOGISTICS AMERICAS LLC, WALLENUS**
 25 **LINES AB, COMPAÑIA SUD AMERICANA**
 26 **DE VAPORES S.A., TOYOFUJI SHIPPING CO.,**
 27 **LTD. and NISSAN MOTOR CAR CARRIER**
 28 **CO., LTD.,**

Defendants.

1 Plaintiffs Tiffany Bui and Nicholas Letourneau ("Plaintiffs"), on behalf of themselves and all
 2 others similarly situated (the "Classes" as defined below), upon personal knowledge as to the facts
 3 pertaining to themselves and upon information and belief as to all other matters, and based on the
 4 investigation of counsel, bring this class action for damages, injunctive relief and other relief pursuant to
 5 federal antitrust laws as well as state antitrust, unfair competition, and consumer protection laws, and the
 6 common law of unjust enrichment, and allege as follows:

7 **I. NATURE OF ACTION**

8 1. This lawsuit is brought as a proposed class action against Defendants NYK Line (North
 9 America) Inc. ("NYK America"), Nippon Yusen Kabushiki Kaisha ("NYK Line"), Mitsui O.S.K. Lines,
 10 Ltd. ("MOL"), Kawasayyiki Kisen Kaisha, Ltd. ("K" Line), "K" Line America, Inc. ("K" Line
 11 America"), EUKOR Vehicle Carriers Inc. ("EUKOR"), Wallenius Wilhelmsen Logistics AS ("WWL"),
 12 Wilh. Wilhelmsen Holding ASA ("WW Holding"), Wilh. Wilhelmsen ASA ("WW ASA"), Wallenius
 13 Wilhelmsen Logistics Americas LLC ("WWL America"), Wallenius Lines AB ("Wallenius"),
 14 Compañía Sud Americana De Vapores S.A. ("CSAV"), Toyofuji Shipping Co., Ltd. ("Toyofuji") and
 15 Nissan Motor Car Carrier Co., Ltd. ("Nissan") (all as defined below, and collectively the "Defendants"),
 16 and unnamed co-conspirators, all of whom provide, market and/or sell Vehicle Carrier Services (defined
 17 below) globally and in the United States, for engaging in at least a five-year-long conspiracy to fix,
 18 raise, maintain and/or stabilize prices, and to allocate the market and customers in the United States for
 19 Vehicle Carrier Services.

20 2. "Vehicle Carriers" transport large numbers of cars, trucks, or other automotive vehicles
 21 including agriculture and construction equipment (collectively "Vehicles") across large bodies of water
 22 using specialized cargo ships known as Roll On/Roll Off vessels ("RoRos"). As used herein, "Vehicle
 23 Carrier Services" refers to the paid ocean transportation of Vehicles by RoRo.

24 3. Plaintiffs seek to represent all persons and entities in the United States who indirectly
 25 purchased from any Defendant, any current or former subsidiary or affiliate of any Defendant, or any co-
 26 conspirator, Vehicle Carrier Services for personal use and not for resale, that were incorporated into the

1 price of a new Vehicle purchased or leased during the period from and including January 1, 2008
2 through such time as the anticompetitive effects of Defendants' conduct ceased (the "Class Period").

3 4. Defendants provide, market, and/or sell Vehicle Carrier Services throughout the United
4 States.

5 5. Defendants and their co-conspirators participated in a combination and conspiracy to
6 suppress and eliminate competition in the Vehicle Carrier Services market by agreeing to fix, raise,
7 maintain and/or stabilize the prices of, and to allocate the market and customers for, Vehicle Carrier
8 Services sold to Vehicle manufacturers and others in the United States. The combination and conspiracy
9 engaged in by Defendants and their co-conspirators was an unreasonable restraint of interstate and
10 foreign trade and commerce in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, state antitrust,
11 unfair competition, and consumer protection laws and the common law of unjust enrichment.

12 6. Competition authorities in the United States, the European Union, Canada and Japan have
13 been investigating a possible global cartel among Vehicle Carriers since at least September 2012. Both
14 the United States Department of Justice's Antitrust Division ("DOJ") and Canada's Competition Bureau
15 ("CCB") are investigating unlawful, anticompetitive conduct in the market for ocean shipping of cars,
16 trucks, construction equipment and other products. The Japanese Fair Trade Commission ("JFTC") and
17 European Commission Competition Authority ("EC") have also conducted coordinated dawn raids at the
18 Tokyo and European offices of several Defendants.

19 7. As a direct result of the anticompetitive and unlawful conduct alleged herein, Plaintiffs
20 and the Classes paid artificially inflated prices for Vehicle Carrier Services incorporated into the price of
21 a new Vehicle purchased or leased during the Class Period, and have thereby suffered antitrust injury to
22 their business or property.

23 **II. JURISDICTION AND VENUE**

24 8. Plaintiffs bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to secure
25 equitable and injunctive relief against Defendants for violating Section 1 of the Sherman Act, 15 U.S.C.
26 § 1. Plaintiffs also allege claims for actual and exemplary damages pursuant to state antitrust, unfair
27

1 competition, and consumer protection laws, and the common law of unjust enrichment, and seek to
2 obtain restitution, recover damages and secure other relief against Defendants for violations of those
3 state laws and common law. Plaintiffs and the Classes also seek attorneys' fees, costs and other expenses
4 under federal and state law.

5 9. This Court has jurisdiction over the subject matter of this action pursuant to Section 16 of
6 the Clayton Act, 15 U.S.C. § 26, Section 1 of the Sherman Act, 15 U.S.C. § 1, and 28 U.S.C. §§ 1331
7 and 1337. This Court has subject matter jurisdiction of the state law claims pursuant to 28 U.S.C. §§
8 1332(d) and 1367, in that (i) this is a class action in which the matter or controversy exceeds the sum of
9 \$5,000,000, exclusive of interests and costs, and in which some members of the proposed Classes are
10 citizens of a state different from some of Defendants; and (ii) Plaintiffs' state law claims form part of the
11 same case or controversy as their federal claims under Article III of the United States Constitution.

12 10. Venue is proper in this district pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22,
13 and 28 U.S.C. §§ 1391 (b), (c), and (d), because a substantial part of the events giving rise to Plaintiffs'
14 claims occurred in this District, a substantial portion of the affected interstate trade and commerce
15 discussed below has been carried out in this District, and one or more of Defendants reside, are licensed
16 to do business in, are doing business in, had agents in, or are found or transact business in this District.

17 11. This Court has in personam jurisdiction over Defendants because each, either directly or
18 through the ownership and/or control of its subsidiaries, inter alia: (a) transacted business in the United
19 States, including in this District; (b) directly or indirectly sold or marketed Vehicle Carrier Services
20 throughout the United States, including in this District; (c) had substantial aggregate contacts with the
21 United States as a whole, including in this District; or (d) were engaged in an illegal price-fixing
22 conspiracy that was directed at, and had a direct, substantial, reasonably foreseeable and intended effect
23 of causing injury to, the business or property of persons and entities residing in, located in, or doing
24 business throughout the United States, including in this District. Defendants also conduct business
25 throughout the United States, including in this District, and they have purposefully availed themselves of
26 the laws of the United States.

12. Defendants engaged in conduct both inside and outside of the United States that caused direct, substantial and reasonably foreseeable and intended anticompetitive effects upon interstate commerce within the United States.

13. The activities of Defendants and their co-conspirators were within the flow of, were intended to, and did have a substantial effect on interstate commerce of the United States. Defendants' Vehicle Carrier Services are sold in the flow of interstate commerce.

14. Vehicles (the prices of which include Vehicle Carrier Services) transported by Defendants from abroad to the United States and sold for use within the United States are goods brought into the United States for sale, and, therefore, constitute import commerce. To the extent any such Vehicles and the related Vehicle Carrier Services are purchased in the United States, and such Vehicles or Vehicle Carrier Services do not constitute import commerce, Defendants' unlawful activities with respect thereto, as more fully alleged herein during the Class Period, had, and continue to have, a direct, substantial and reasonably foreseeable effect on United States commerce. The anticompetitive conduct, and its effect on United States commerce described herein, proximately caused antitrust injury to Plaintiffs and members of the Classes in the United States.

15. By reason of the unlawful activities hereinafter alleged, Defendants substantially affected commerce throughout the United States, causing injury to Plaintiffs and members of the Classes. Defendants, directly and through their agents, engaged in activities affecting all states, to fix, raise, maintain and/or stabilize prices and allocate the market and customers in the United States for Vehicle Carrier Services, which conspiracy unreasonably restrained trade and adversely affected the market for Vehicle Carrier Services.

16. Defendants' conspiracy and unlawful conduct described herein adversely affected persons and entities in the United States who purchased Vehicle Carrier Services for personal use and not for resale, including Plaintiffs and members of the Classes.

1 **III. PARTIES**

2 **A. Plaintiffs**

3 17. Plaintiffs Tiffany Bui and Nicholas Letourneau are California residents who purchased
4 Vehicle Carrier Services indirectly from one or more Defendants.

5 **B. Defendants**

6 18. Defendant NYK Line is a Japanese corporation with a principal place of business at 3-2,
7 Marunouchi 2 Chome, Chidyoda-Ku, Tokyo. NYK Line – directly and/or through its subsidiaries, which
8 it wholly owned and/or controlled – provided, marketed and/or sold Vehicle Carrier Services throughout
9 the United States, including in this District, during the Class Period.

10 19. Defendant NYK America is a New Jersey corporation with its principal place of business
11 located at 300 Lighting Way, Secaucus, New Jersey 07094. NYK America is a wholly owned subsidiary
12 of NYK Line. NYK America provided, marketed and/or sold Vehicle Carrier Services throughout the
13 United States, including in this District, during the Class Period.

14 20. Defendant MOL is a Japanese corporation with a principal place of business at 11
15 Toranomom 2-chome, Minato-ku, Tokyo. MOL – directly and/or through its subsidiaries, which it
16 wholly owned and/or controlled – provided, marketed and/or sold Vehicle Carrier Services throughout
17 the United States, including in this District, during the Class Period.

18 21. Defendant “K” Line is a Japanese corporation with its principal place of business at 1-1,
19 Uchisaiwaicho 2-Chome, Chiyoda-ku, Tokyo 100-8540. “K” Line – directly and/or through its
20 subsidiaries, which it wholly owned and/or controlled – provided, marketed and/or sold Vehicle Carrier
21 Services throughout the United States, including in this District, during the Class Period.

22 22. Defendant “K” Line America is a Michigan corporation and a wholly owned subsidiary
23 of “K” Line with its corporate headquarters (and national operations and service center) located in
24 Richmond, Virginia. “K” Line America provided, marketed and/or sold Vehicle Carrier Services
25 throughout the United States, including in this District, during the Class Period.

26 23. Defendant WW Holding is a Norwegian corporation with a principal place of business at
27

1 Strandveien 20, NO-1366 Lysaker, Norway. It is the holding company for Defendant WW ASA and
2 other entities which comprise the Wilh. Wilhelmsen Group. WW Holding – directly and/or through its
3 subsidiaries, which it wholly owned and/or controlled – provided, marketed and/or sold Vehicle Carrier
4 Services throughout the United States, including in this District, during the Class Period.

5 24. Defendant WW ASA is a Norwegian corporation with its principal place of business in
6 Lysaker, Norway. Defendant WW Holding owns 73% of WW ASA. WW ASA – directly and/or
7 through its subsidiaries, which it wholly owned and/or controlled – provided, marketed and/or sold
8 Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

9 25. Defendant EUKOR is a South Korean company with its principal place of business at
10 13th floor Capital Tower, 736-1 Yeoksam-dong, Gangnam-gu, Seoul, 135-983, Korea. EUKOR –
11 directly and/or through its subsidiaries, which it wholly owned and/or controlled – provided, marketed
12 and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the
13 Class Period.

14 26. Defendant WWL is a Norwegian corporation that is a joint venture between Defendants
15 WW ASA and Defendant Wallenius. WWL – directly and/or through its subsidiaries, which it wholly
16 owned and/or controlled – provided, marketed and/or sold Vehicle Carrier Services throughout the
17 United States, including in this District, during the Class Period.

18 27. Defendant WWL America is a Delaware limited liability company with its principal
19 place of business in Woodcliff Lake, NJ. It is a wholly-owned subsidiary of Defendant WWL. WWL
20 America provided, marketed and/or sold vehicle Carrier Services throughout the United States,
21 including in this District, during the Class Period.

22 28. Defendant Wallenius is a Swedish corporation with its principal place of business at
23 Swedenborgsgatan 19, S-104 62 Stockholm, Sweden. Wallenius – directly and/or through its
24 subsidiaries, which it wholly owned and/or controlled – provided, marketed and/or sold vehicle Carrier
25 Services throughout the United States, including in this District, during the Class Period.

1 29. Defendant CSAV is a Chilean corporation with a principal place of business at Plaza
2 Sotomayor 50, Valparaíso, Chile. CSAV – directly and/or through its subsidiaries, which it wholly
3 owned and/or controlled – provided, marketed and/or sold Vehicle Carrier Services throughout the
4 United States, including in this District, during the Class Period.

5 30. Defendant Toyofuji is a Japanese corporation with a principal place of business at 33-3
6 Shinpo-cho, Tokai City, Aichi 476-8522, Japan. Toyofuji – directly and/or through its subsidiaries,
7 which it wholly owned and/or controlled – provided, marketed and/or sold Vehicle Carrier Services
8 throughout the United States, including in this District, during the Class Period.

9 31. Defendant Nissan is a Japanese corporation with a principal place of business at Hibiya
10 Daibiru Bldg., 1-2-2 Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan. Nissan – directly and/or
11 through its subsidiaries, which it wholly owned and/or controlled – provided, marketed and/or sold
12 Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

13 **IV. AGENTS AND CO-CONSPIRATORS**

14 32. Each Defendant acted as the principal of or agent for the other Defendants with respect to
15 the acts, violations, and common course of conduct alleged herein.

16 33. Various persons, partnerships, sole proprietors, firms, corporations and individuals not
17 named as Defendants in this lawsuit, and individuals, the identities of which are presently unknown,
18 have participated as co-conspirators with Defendants in the offenses alleged in this Complaint, and have
19 performed acts and made statements in furtherance of the conspiracy or in furtherance of the
20 anticompetitive conduct.

21 34. Whenever in this Complaint reference is made to any act, deed or transaction of any
22 corporation or limited liability entity, the allegation means that the corporation or limited liability entity
23 engaged in the act, deed or transaction by or through its officers, directors, agents, employees or
24 representatives while they were actively engaged in the management, direction, control or transaction of
25 the corporation's or limited liability entity's business or affairs.

1 **V. FACTUAL ALLEGATIONS**

2 **A. The Vehicle Carrier Industry**

3 35. A RoRo ship is a special type of ocean vessel that allows wheeled Vehicles to be driven
4 and parked on its decks for long voyages. These ships, also known as Vehicle Carriers, have special
5 ramps to permit easy access, high sides to protect the cargo during transport, and numerous decks to
6 allow storage of a large number and variety of Vehicles.

7 36. There are different types of RoRo ships. A Pure Vehicle Carrier (PCC) transports only
8 cars, and a Pure Car and Truck Carrier (PCTC) transports cars, trucks, and other four wheeled vehicles.
9 Although a RoRo ship cannot transport containers, some hybrid RoRo/container ships have been built.



19 WW ASA's MV Tønsberg RoRo vessel

20 37. Vehicle Carriers are a defined submarket of the larger bulk shipping market. World trade
21 exploded after the proliferation of container ships. These ships allow a large range of goods, such as
22 food and consumer electronics, to be packed in standard-sized containers for quick loading and delivery.
23 However, cars, trucks, and heavy machinery, due to their larger and more irregular shapes, are not easily
24 shipped in containers. Furthermore, there are no reasonable substitutes for the shipment of Vehicles by
25 sea because any alternatives, such as air transportation, would be too costly.

1 38. For new Vehicles, the original equipment manufacturers (“OEMs”) – mostly large
2 automotive, construction and agricultural manufacturers – purchase Vehicle Carrier Services directly
3 from Defendants. The OEMs and Vehicle Carriers generally enter into long-term shipping arrangements.

4 39. Defendants and their co-conspirators provided Vehicle Carrier Services to OEMs for
5 transportation of Vehicles sold in the United States and elsewhere. Defendants and their coconspirators
6 provided Vehicle Carrier Services (a) in the United States for the transportation of Vehicles
7 manufactured elsewhere and exported for sale in the United States, and (b) in other countries for the
8 transportation of Vehicles manufactured elsewhere and exported for sale in the United States.

9 40. Plaintiffs and members of the proposed Classes purchased Vehicle Carrier Services
10 indirectly from one or more of the Defendants by virtue of their purchase or lease of a new Vehicle
11 during the Class Period.

12 41. The annual market for Vehicle Carrier Services in the United States is nearly one billion
13 dollars. Specifically, for the transportation of new, imported motor vehicles manufactured elsewhere
14 and exported for sale in the United States is between \$600 and \$800 million per year.

15 **B. The Market Structure and Characteristics Support the Existence of a Conspiracy**

16 42. The structure and other characteristics of the market for Vehicle Carrier Services are
17 conducive to a price-fixing agreement and have made collusion particularly attractive. Specifically, the
18 Vehicle Carrier Services market: (1) has high barriers to entry; (2) has inelasticity of demand; (3) is
19 highly concentrated; (4) is highly homogenized; (5) is rife with opportunities to meet and conspire; and
20 (6) has excess capacity.

21 *1. The Market for Vehicle Carrier Services Has High Barriers to Entry*

22 43. A collusive arrangement that raises product prices above competitive levels would, under
23 basic economic principles, attract new entrants seeking to benefit from the supra-competitive pricing.
24 When, however, there are significant barriers to entry, new entrants are much less likely to enter the
25 market. Thus, barriers to entry help facilitate the formation and maintenance of a cartel.

1 44. There are substantial barriers that preclude, reduce, or make more difficult entry into the
2 Vehicle Carrier Services market. Transporting Vehicles without damage across oceans requires highly
3 specialized and sophisticated equipment, resources and industry knowledge. The ships that make such
4 transport possible are highly specialized. Such ships are purposely built to an unusual design that
5 includes high sides, multiple interior decks, and no container cargo space. These characteristics restrict
6 the use of the ships to the Vehicle Carrier Services market. A new entrant into the business would face
7 costly and lengthy start-up costs, including multi-million dollar costs associated with manufacturing or
8 acquiring a fleet of Vehicle Carriers and other equipment, energy, transportation, distribution
9 infrastructure and skilled labor. It is estimated that the capital cost of a RoRo is at least \$95 million.¹

10 45. Additionally, the nature of the Vehicle Carrier Services industry requires the
11 establishment of a network of routes to serve a particular set of customers with whom Defendants
12 establish long-term relationships. The existence of these established routes and long-term contracts
13 increases switching costs for shippers and presents an additional barrier to entry.

14 46. The Vehicle Carrier Services market also involves economies of scale and scope which
15 present additional barriers to entry.

16 (a) Economies of scale exist where firms can lower the average cost per unit through
17 increased production, since fixed costs are shared over a larger number of units. Fuel accounts for nearly
18 50% of all operational costs for Vehicle Carriers. However Vehicle Carriers are less sensitive to fuel
19 prices than other modes of transportation, providing opportunities to exploit economies of scale. As fuel
20 prices increased in the last 5-10 years, market participants were incentivized to increase the average size
21 of vessels. This reflects the presence of economies of scale, because fuel costs did not increase
22 proportionally as vessel size grew.

23 (b) Economies of scope exist where firms achieve a cost advantage from providing a
24 wide variety of products or services. The major Vehicle Carriers, including Defendants, own related
25

26 ¹ Asaf Ashar, *Marine Highways' New Direction*, J. OF COM. 38 (Nov. 21, 2011).

1 shipping or transportation businesses they can utilize to provide additional services to clients, such as
2 the operation of dedicated shipping terminals and inland transportation of Vehicles.

3 2. *There is Inelasticity of Demand for Vehicle Carrier Services*

4 47. “Elasticity” is a term used to describe the sensitivity of supply and demand to changes in
5 one or the other. For example, demand is said to be “inelastic” if an increase in the price of a product
6 results in only a small decline in the quantity sold of that product, if any. In other words, customers have
7 nowhere to turn for alternative, cheaper products of similar quality, and so continue to purchase despite
8 a price increase.

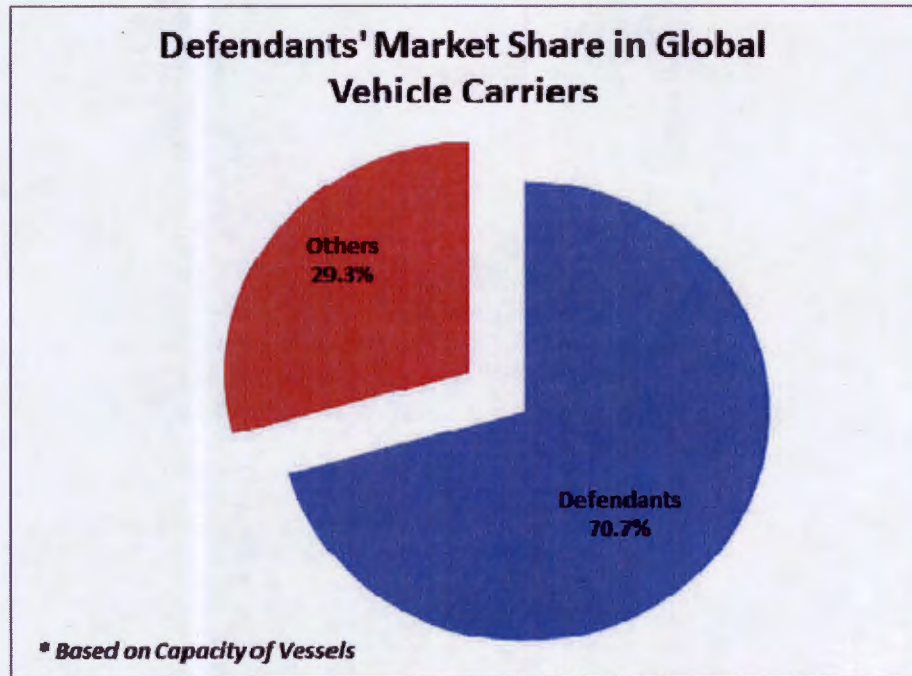
9 48. For a cartel to profit from raising prices above competitive levels, demand must be
10 relatively inelastic at competitive prices. Otherwise, increased prices would result in declining sales,
11 revenues, and profits as customers purchased substitute products or declined to buy altogether. Inelastic
12 demand is a market characteristic that facilitates collusion, allowing producers to raise their prices
13 without triggering customer substitution and lost sales revenue.

14 49. Demand for Vehicle Carrier Services is highly inelastic. This is because there are no
15 close substitutes for this service. A Vehicle Carrier is the only ocean vessel that has the carrying
16 capacity for a large number of Vehicles. A Vehicle Carrier is also more versatile than other substitutes
17 because it is built to adjust to various shapes and sizes. Because a container ship functions based on the
18 uniformity of the cargo—everything must fit within the standardized containers—it is not conducive to
19 transporting larger and more irregularly-shaped goods, such as cars, trucks, and agricultural and
20 construction equipment. Foreign OEMs must employ Vehicle Carrier Services to facilitate the sale of
21 their Vehicles in North America, regardless of whether prices are kept at supra-competitive levels. There
22 is simply no alternative for high volume transoceanic transportation of Vehicles to the United States.

23 3. *The Market for Vehicle Carriers Is Highly Concentrated*

24 50. A concentrated market is more susceptible to collusion and other anticompetitive
25 practices.

51. Defendants dominate the global Vehicle Carrier Services market. Defendants controlled over 70 percent of the Vehicle Carrier Services market during the Class Period.²



4. *The Services Provided by Vehicle Carriers Are Highly Homogeneous*

52. Vehicle Carrier Services are a commodity-like service that is interchangeable among Vehicle Carriers.

53. When purchasers view products or services offered by different suppliers as interchangeable, it is easier for suppliers to unlawfully agree on the price for the product or service in question, and it is easier to effectively police the collusively set prices. This makes it easier to form and sustain an unlawful cartel.

54. Vehicle Carrier Services are qualitatively the same across different carriers. Each Defendant has the capability to provide the same or similar Vehicle Carrier Services and Vehicle Carrier Service customers make purchase decisions based primarily on price. The core considerations for a purchaser will be where, when and how much. This commoditization and interchangeability of Vehicle

² Source: Hesnes Shipping AS, The Car Carrier Market 2010.

Carrier Services facilitated Defendants' conspiracy by making coordination on price much simpler than if Defendants had numerous distinct products or services with varying features.

5. *Defendants Had Ample Opportunities to Meet and Conspire*

55. Defendants attended industry events where they had the opportunity to meet, have improper discussions under the guise of legitimate business contacts, and perform acts necessary for the operation and furtherance of the conspiracy. For example, there are frequent trade shows for shipping companies around the globe; such as the Breakbulk conferences³ and the biennial RoRo trade show in Europe.

56. Defendants "K" Line and NYK Line are also members of the Transpacific Stabilization Agreement (TSA), which consists of "major ocean container shipping lines that carry cargo from Asia to ports and inland points in the U.S." According to the TSA website, it provides a forum for its members to, inter alia:

- Meet, exchange market information, and jointly conduct market research; and
- Develop voluntary, non-binding guidelines for rates and charges.⁴

TSA meetings, which are ostensibly held to set rates for container shipping, provide an opportunity for its members, including Defendants "K" Line and NYK Line, to discuss Vehicle shipping markets, routes, and rates and engage in illegal price fixing, customer allocation, and bid rigging conspiracies. In fact, the CCB, DOJ, JFTC, EC, and various other antitrust organizations have already fined Defendants

³ Breakbulk Magazine provides its readers with project cargo, heavy lift and RoRo logistics intelligence including news, trending, data and metrics. Breakbulk Magazine's global events include Breakbulk Transportation Conferences & Exhibitions, which "are the largest international events focused on traditional breakbulk logistics, heavy-lift transportation and project cargo trade issues." The conferences provide opportunities to "meet with specialized cargo carriers, ports, terminals, freight forwarders, heavy equipment transportation companies and packers." Source: <http://www.breakbulk.com/breakbulk-global-events/>.

⁴ See About TSA at <http://www.tsacarriers.org/about.html>.

1 “K” Line, NYK Line, and MOL for their roles in a conspiracy to fix airfreight forwarding fees across
2 several continents.

3 57. Additionally, Defendants routinely enter into joint “vessel sharing” or “space charter”
4 agreements. These agreements allow shipping lines to reserve space or “slots” on one another’s ships.
5 Vessel sharing agreements are very common in the international maritime shipping industry, comprising
6 approximately 79% of all agreements registered with the Federal Maritime Commission (“FMC”).
7 While allegedly entered into for space charter purposes, these agreements provide an opportunity for
8 Defendants to discuss Vehicle shipping markets, routes and rates, and to engage in illegal price fixing
9 and bid rigging conspiracies.

10 58. The very nature of the negotiations between Vehicle Carriers and OEMs also facilitates
11 collusion among Vehicle Carriers. Soren Tousgaard Jensen, Managing Director of WWL Russia, has
12 explained, using Japan as an example,

13 [T]he manufacturers [in Japan], in order to get the right frequency, the
14 right market coverage and the right ports, have often called in two, three,
15 sometimes four shipping lines around the table and said that they would
16 spread their volumes between them, depending on how competitive they
17 were. The shipping lines have to work together to find ways of not having
18 ships in the same position and ways of having one line deliver at the
19 beginning of the month and another mid-month.⁵

17 6. *The Market for Vehicle Carrier Services Has Excess Capacity*

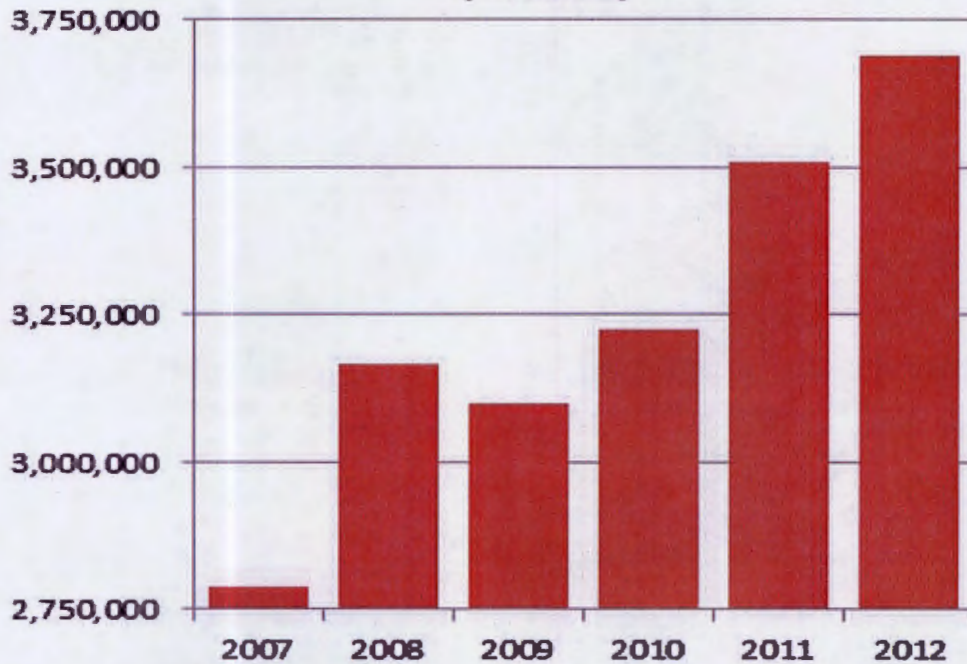
18 59. Excess capacity occurs when a market is capable of supplying more of a product or
19 service than is needed. This often means that demand is less than the output the market has the
20 capability to produce. Academic literature suggests, and courts have found, that the presence of excess
21 capacity can facilitate collusion.⁶

23 ⁵ *Profitability is the key issue for RoRo carriers*, AUTO. SUPPLY CHAIN (Oct. 4, 2012), available at
24 <http://www.automotivesupplychain.org/features/133/77/Profitability-the-key-issuefor-RoRo-carriers/>.

25 ⁶ See Benoit, J. and V. Krishna, *Dynamic Duopoly: Prices and Quantities*, REV. OF ECON. STUDIES, 54,
26 23-36 (1987); Carl Davidson & Raymond Deneckere, *Excess Capacity and Collusion*, INT’L ECON.
REV., 31(3), 521-41 (1990); *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 657 (7th Cir.
2002).

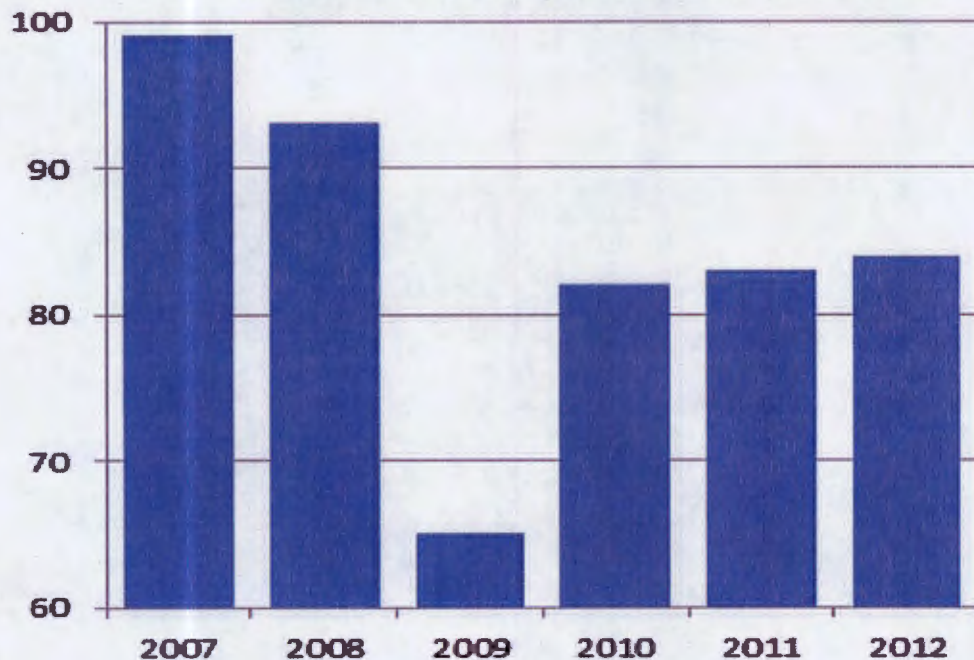
60. Significantly, the market for Vehicle Carrier Services has operated in a state of excess capacity since 2008. The tables below demonstrate that while the capacity of Vehicle Carriers to transport Vehicles has increased since 2007, the utilization rate of Vehicle Carriers has fallen and remained stable at a rate of approximately 83% since 2010:

Capacity of Vehicle Carriers (in cars)



Source: The Car Carrier Market, 2004-2012; Hesnes Shipping AS

Vehicle Carrier Fleet Utilization Rate (% of ships used in operations)



Source: The Platou Report 2004-2012

61. In the face of excess capacity, Defendants agreed to reduce capacity and increase prices through coordinated “slow steaming.” Slow steaming involves lowering a carrier’s speed to conserve on fuel costs. NYK Line, for example, has used slow steaming for container ships and Vehicle Carriers since 2010. By elongating the time it takes to make ocean crossings, Vehicle Carriers can reduce capacity thereby creating artificial capacity shortages.

62. In 2011, the FMC opened an investigation into slow steaming after reportedly receiving complaints from shippers.⁷ Roy Pearson, deputy director of the FMC’s Bureau of Trade Analysis, told the FMC that academic studies of slow steaming showed carriers could save \$3 billion per year in fuel

⁷ Specifically, the FMC is investigating the “economic effects” of slow steaming to determine whether it is causing “unreasonable constraints” on the international supply chain.

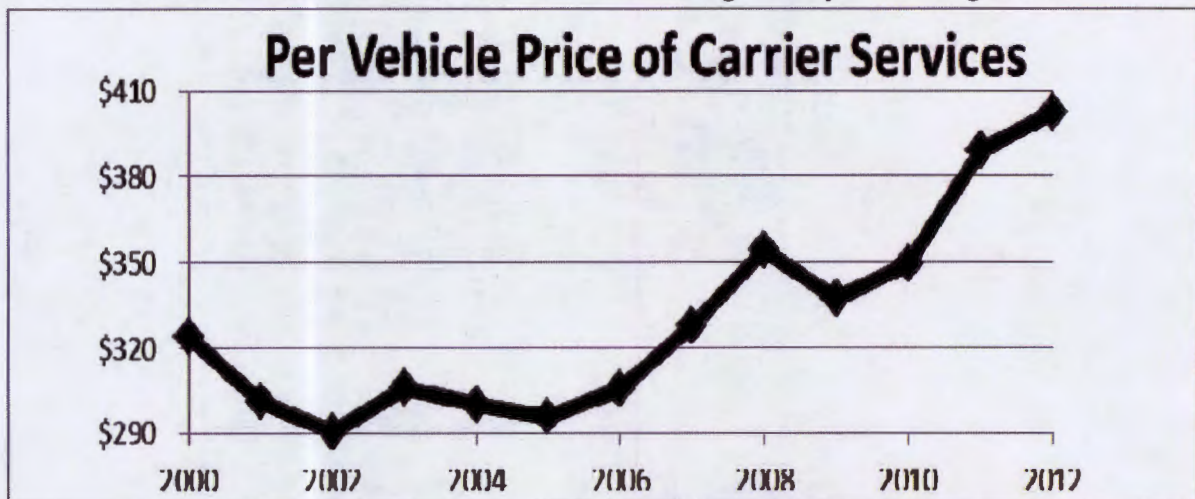
costs.⁸ As part of its investigation, the FMC issued a Notice of Inquiry soliciting public comment on the impact of slow steaming on United States ocean liner commerce. In response, the National Industrial Transportation League, an association representing shippers, commented that despite the cost savings generated by slow steaming, many League members had actually “experienced increased shipping costs”⁹

63. Defendants’ practices of slow steaming and vessel sharing represent concerted, collusive efforts to reduce output in order to increase prices despite overcapacity in the Vehicle Carrier Services market. By acting in concert pursuant to their conspiracy, Defendants decreased the availability of Vehicle Carrier Services in the market, which caused prices to rise artificially during the Class Period.

C. There Is Strong Evidence of Collusion in the Vehicle Carrier Services Market

1. Defendants Raised Prices at a Rate that Far Exceeded Demand

64. Prices for Vehicle Carrier Services have been generally increasing since 2006.



⁸ R.G. Edmonson, *FMC to Review Slow Steaming*, J. OF COM. (Jan. 7, 2011), available at http://www.joc.com/maritime-news/fmc-review-slow-steaming_20110107.html.

⁹ Comments of The National Industrial Transportation League to the FMC’s Notice of Inquiry Solicitation of Views on the Impact of Slow Steaming (Apr. 5, 2011), available at http://www.fmc.gov/noi-slow_steaming/.

1 65. As the graph above demonstrates, pricing for Vehicle Carrier Services (per vehicle)
2 remained relatively flat from 2001 to 2006. In 2001, the per-vehicle price was approximately \$301.30,
3 while in 2006 the per vehicle price was \$305.79, an increase of less than 2%.

4 66. Beginning just prior to the Class Period, the price of Vehicle Carrier Services has
5 increased by 23%.

6 67. The increase in the price of Vehicle Carrier Services far outpaced any increase in demand
7 during the Class Period.

8 68. In the absence of an unlawful price-fixing conspiracy, according to the laws of supply
9 and demand, prices would not increase at a rate greater than the rate of demand, yet that is exactly what
10 happened in the Vehicle Carrier Services market during the Class Period.

11 2. *Defendants Previously Colluded in Different Markets*

12 69. The affiliates and subsidiaries of certain Defendants have recently pled guilty and agreed
13 to pay millions of dollars in fines for violating the antitrust laws in other markets.

14 70. In 2007, the DOJ and EC launched an investigation into price fixing among international
15 air freight forwarders, including certain affiliates and subsidiaries of Defendants. On October 10 of that
16 year, the EC launched unannounced inspections at the premises of various international air freight
17 forwarding companies with the help and coordination of various other nations' antitrust enforcement
18 groups.

19 71. On March 19, 2009, the JFTC ordered 12 companies to pay \$94.7 million in fines for
20 violations of the Japanese Antimonopoly Act ("AMA"). Included among the 12 companies were "K"
21 Line Logistics, Ltd., a subsidiary of Defendant "K" Line, Yusen Air & Sea Services Co., Ltd., a
22 subsidiary of Defendant NYK Line, and MOL Logistics (Japan) Co., Ltd., a subsidiary of Defendant
23 MOL.

24 72. The JFTC concluded that the companies had, over a five-year period, met and agreed to,
25 among other things, the amount of fuel surcharges, security charges, and explosive inspection charges
26

1 that they would charge their international air freight forwarding customers. The agreements were,
2 according to the JFTC, negotiated at meetings of the Japan Aircargo Forwarders Association.

3 73. Yusen Logistics Co., Ltd. filed a complaint in April 2009 requesting a hearing to review
4 the JFTC's orders, and the Tokyo High Court upheld the orders on November 9, 2012.

5 74. On September 30, 2011, MOL Logistics (Japan) Co., Ltd. pleaded guilty to a Criminal
6 Information in the United States District Court for the District of Columbia charging it with Sherman
7 Act violations related to price fixing. MOL is one of 16 companies that agreed to plead guilty or have
8 pled guilty as a result of the DOJ's freight forwarding investigation, which has resulted in more than
9 \$120 million in criminal fines to date. According to the Criminal Information filed against MOL
10 Logistics (Japan) Co. Ltd., it and its co-conspirators accomplished their conspiracy by:

- 11 (a) Participating in meetings, conversations, and communications to discuss certain
12 components of freight forwarding service fees to be charged on air cargo shipments from
13 Japan to the United States;
- 14 (b) Agreeing, during those meetings, conversations, and communications, on one or more
15 components of the freight forwarding service fees to be charged on air cargo shipments
16 from Japan to the United States;
- 17 (c) Levying freight forwarding service fees, and accepting payments for services provided
18 for, air cargo shipments from Japan to the United States, in accordance with the
19 agreements reached; and
- 20 (d) Engaging in meetings, conversations, and communications for the purpose of monitoring
21 and enforcing adherence to the agreed-upon freight forwarding service fees.

22 75. On March 28, 2012, the EC fined 14 international groups of companies, including Yusen
23 Shenda Air & Sea Service (Shanghai) Ltd., a subsidiary of Defendant NYK Line, a total of \$219 million
24 for their participation in the air cargo cartels and violating European Union antitrust rules. According to
25 the EC, "[i]n four distinct cartels, the cartelists established and coordinated four different surcharges and
26

1 charging mechanisms, which are component elements of the final price billed to customers for these
2 services.”

3 76. On March 8, 2013, the DOJ announced that “K” Line Logistics, Ltd. and Yusen Logistics
4 Co., Ltd., a subsidiary of Defendant NYK Line, agreed to pay criminal fines of \$3,507,246 and
5 \$15,428,207, respectively, for their roles in a conspiracy to fix certain freight-forwarding fees for cargo
6 shipped by air from the United States to Japan. As with MOL Logistics (Japan) Co. Ltd., “K” Line
7 Logistics, Ltd. and Yusen Logistics Co., Ltd. pleaded guilty to meeting with co-conspirators, agreeing to
8 what freight forwarding service fees should be charged on air cargo shipments, and actually levying
9 those fees on its customers from about September 2002 until at least November 2007.

10 3. *Competition Authorities Have Launched and Coordinated a Global Investigation*
11 *into Price-Fixing in the Market for Vehicle Carrier Services*

12 77. United States, Canadian, Japanese, and European competition authorities have initiated a
13 global, coordinated antitrust investigation concerning the unlawful conspiracy alleged herein. The
14 investigation originated in the United States after an American shipping company complained of
15 Defendants’ conspiracy to the DOJ.

16 78. On September 6, 2012, the JFTC executed raids at the Japanese offices of NYK Line,
17 MOL, “K” Line, WWL, and EUKOR as part of an investigation into anticompetitive conduct related to
18 Vehicle Carrier Services. Defendant “K” Line confirmed in a statement to its shareholders, as part of its
19 FY2012 2nd Quarter report, that it was visited by a JFTC investigation team on suspicion of violating
20 Japan’s Antimonopoly Act in terms of transporting cars and wheeled construction machinery.
21 Defendants NYK Line and MOL further confirmed that their Japanese offices had been searched.

22 79. The Japan Daily Press reported that a JFTC official said the cartel “was formed to deal
23 with the rising fuel charges, personnel costs and shipbuilding expenses.” According to the article,
24 “apparently some companies formed smaller groups for specific shipping routes, such as for Europe,
25 North America and other Asian nations” and the three major Japanese firms – NYK Line, “K” Line and
26

1 MOL – played “a big role in this setup.” “The unscrupulous companies were controlling the competition
2 and manipulating transport orders from carmakers.”

3 80. Defendant WW ASA confirmed in a press release on September 7, 2012 that it had
4 received a request for information from the CCB, and that (i) its subsidiaries, WWL and EUKOR, had
5 been visited by the JFTC as part of an investigation related to the Japan Antimonopoly Act; (ii) WWL
6 had received requests for information from the EC, DOJ and CCB; and (iii) EUKOR had received
7 requests for information from the DOJ and the CCB. According to Defendant WW ASA, the purpose of
8 the requests made to WWL and EUKOR “is to ascertain whether there is evidence of any infringement
9 of competition law related to possible price cooperation between carriers and allocation of customers.”

10 81. On the same day, in coordination with United States and Japanese authorities, the EC
11 carried out additional unannounced inspections at the European offices of several maritime shipping
12 companies suspected of operating a cartel. According to the EC, it carried out the inspections in
13 coordination with United States and Japanese competition authorities, and “ha[d] reasons to believe that
14 the companies concerned may have violated Article 101 of the [Treaty on the functioning of the
15 European Union] TFEU prohibiting cartels and restrictive business practices.”

16 82. The Japanese Business Daily reported that the shipping affiliates of Toyota Motor Corp.
17 and Nissan Motor Co. were also among the companies raided by the JFTC. Toyota Motor Corp.’s
18 shipping affiliate is Defendant ToyoFuji, and Nissan Motor Co.’s is Defendant Nissan.

19 83. Defendant CSAV issued a statement in mid-September revealing that its employees had
20 received subpoenas from the DOJ and CCB in connection with the suspected Vehicle Carrier Services
21 cartel. Defendant CSAV stated, “[t]he investigation seeks to inquire into the existence of antitrust law
22 violations related to cooperation agreements on prices and allocation of clients between car carriers.”

23 84. The DOJ, through spokesperson Gina Talamona, confirmed to the media shortly after the
24 September 2012 raids, “We are coordinating with the European Commission, the Japanese Fair Trade
25 Commission and other international competition authorities.” Ms. Talamona explained that “[t]he
26

antitrust division is investigating the possibility of anticompetitive practices involving the ocean shipping of cars, trucks, construction equipment, and other products.”

VI. CLASS ACTION ALLEGATIONS

85. Plaintiffs bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking equitable and injunctive relief on behalf of the following class (the “Nationwide Class”):

All persons and entities in the United States who indirectly purchased from any Defendant or any current or former subsidiary or affiliate thereof, or any co-conspirator, Vehicle Carrier Services for personal use and not for resale, incorporated into the price of a new Vehicle purchased or leased during the Class Period.

86. Plaintiffs also bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to the common law of unjust enrichment and the state antitrust, unfair competition, and consumer protection laws of the states listed below (the “Plaintiff States”) on behalf of the following class (the “Damages Class”):

All persons and entities in the Plaintiff States who indirectly purchased, from any Defendant or any current or former subsidiary or affiliate thereof, or any coconspirator, Vehicle Carrier Services for personal use and not for resale, incorporated into the price of a new Vehicle purchased or leased during the Class Period.

87. The Nationwide Class and the Damages Class are referred to herein as the “Classes.” Excluded from the Classes are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased Vehicle Carrier Services directly.

88. While Plaintiffs do not know the exact number of the members of the Classes, Plaintiffs believe there are (at least) thousands of members in each Class.

89. Common questions of law and fact exist as to all members of the Classes. This is particularly true given the nature of Defendants’ conspiracy, which was generally applicable to all the

1 members of both Classes, thereby making appropriate relief with respect to the Classes as a whole. Such
2 questions of law and fact common to the Classes include, but are not limited to:

- 3 (a) Whether Defendants and their co-conspirators engaged in a combination and conspiracy
4 among themselves to fix, raise, maintain or stabilize the prices of Vehicle Carrier
5 Services sold in the United States;
- 6 (b) The identity of the participants of the alleged conspiracy;
- 7 (c) The duration of the alleged conspiracy and the acts carried out by Defendants and their
8 co-conspirators in furtherance of the conspiracy;
- 9 (d) Whether the alleged conspiracy violated the Sherman Act, as alleged in the First Claim
10 for Relief;
- 11 (e) Whether the alleged conspiracy violated state antitrust and unfair competition law, and/or
12 state consumer protection law, as alleged in the Second and Third Claims for Relief;
- 13 (f) Whether Defendants unjustly enriched themselves to the detriment of Plaintiffs and
14 members of the Classes, thereby entitling Plaintiffs and members of the Classes to
15 disgorgement of all benefits derived by Defendants, as alleged in the Fourth Claim for
16 Relief;
- 17 (g) Whether the conduct of Defendants and their co-conspirators, as alleged in this
18 Complaint, caused injury to the business or property of Plaintiffs and members of the
19 Classes;
- 20 (h) The effect of the alleged conspiracy on the prices of Vehicle Carrier Services sold in the
21 United States during the Class Period;
- 22 (i) Whether Plaintiffs and members of the Classes had any reason to know or suspect the
23 conspiracy, or any means to discover the conspiracy;
- 24 (j) Whether Defendants and their co-conspirators fraudulently concealed the conspiracy's
25 existence from the Plaintiffs and members of the Classes;
- 26 (k) The appropriate injunctive and related equitable relief for the Nationwide Class; and

1 (l) The appropriate level of class-wide damages for the Damages Class.

2 90. Plaintiffs' claims are typical of the claims of the members of the Classes, and Plaintiffs
3 will fairly and adequately protect the interests of the Classes. Plaintiffs and all members of the Classes
4 are similarly affected by Defendants' wrongful conduct in that they paid artificially inflated prices for
5 Vehicle Carrier Services purchased indirectly from Defendants and/or their co-conspirators.

6 91. Plaintiffs' claims arise out of the same common course of conduct giving rise to the
7 claims of the other members of the Classes. Plaintiffs' interests are coincident with, and not antagonistic
8 to, those of the other members of the Classes. Plaintiffs are represented by counsel that is competent and
9 experienced in the prosecution of antitrust and class action litigation.

10 92. The questions of law and fact common to the members of the Classes predominate over
11 any questions affecting only individual members, including legal and factual issues relating to liability
12 and damages.

13 93. Class action treatment is a superior method for the fair and efficient adjudication of the
14 controversy, in that, among other things, such treatment will permit a large number of similarly situated
15 persons to prosecute their common claims in a single forum simultaneously, efficiently and without the
16 unnecessary duplication of evidence, effort and expense that numerous individual actions would
17 engender. The benefits of proceeding through the class mechanism, including providing injured persons
18 or entities with a method for obtaining redress for claims that it might not be practicable to pursue
19 individually, substantially outweigh any difficulties that may arise in management of this class action.

20 94. The prosecution of separate actions by individual members of the Classes would create a
21 risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for
22 Defendants.

23 **VII. PLAINTIFFS AND THE CLASSES SUFFERED ANTITRUST INJURY**

24 95. Defendants' price-fixing conspiracy had the following effects, among others:

- 25 (a) Price competition has been restrained or eliminated with respect to Vehicle Carrier
26 Services;

(b) The prices of Vehicle Carrier Services have been fixed, raised, maintained, or stabilized at artificially inflated levels;

(c) Indirect purchasers of Vehicle Carrier Services have been deprived of free and open competition; and

(d) Indirect purchasers of Vehicle Carrier Services paid artificially inflated prices.

96. During the Class Period, Plaintiffs and members of the Classes paid supra-competitive prices for Vehicle Carrier Services. OEMs and automobile dealers passed on the inflated charges to purchasers and lessees of new Vehicles. Those overcharges have unjustly enriched Defendants.

97. The market for Vehicle Carrier Services and the market for Vehicles are inextricably linked and intertwined because the market for Vehicle Carrier Services exists to serve the Vehicle market. Without the Vehicles, the Vehicle Carrier Services have little to no value because they have no independent utility. Indeed, the demand for Vehicles creates the demand for Vehicle Carrier Services.

98. While even a monopolist would increase its prices when the cost of its inputs increased, the economic necessity of passing through cost changes increases with the degree of competition a firm faces. The OEM and dealer markets for new Vehicles are subject to vigorous price competition. The OEMs and dealers have thin net margins, and are therefore at the mercy of their input costs, such that increases in the price of Vehicle Carrier Services lead to corresponding increases in prices for new Vehicles at the OEM and dealer levels. When downstream distribution markets are highly competitive, as they are in the case of new Vehicles shipped by Vehicle Carrier, overcharges are passed through to ultimate consumers, such as the indirect-purchaser Plaintiffs and members of the Classes.

99. Hence, the inflated prices of Vehicle Carrier Services in new Vehicles resulting from Defendants' price-fixing conspiracy have been passed on to Plaintiffs and the other members of the Classes by OEMs and dealers.

100. The purpose of the conspiratorial conduct of Defendants and their co-conspirators was to raise, fix, rig or stabilize the price of Vehicle Carrier Services and, as a direct and foreseeable result, the price of new Vehicles shipped by Vehicle Carriers.

1 101. Economists have developed techniques to isolate and understand the relationship between
2 one “explanatory” variable and a “dependent” variable in those cases when changes in the dependent
3 variable are explained by changes in a multitude of variables, even when all such variables may be
4 changing simultaneously. That analysis – called regression analysis – is commonly used in the real
5 world and in litigation to determine the impact of a price increase on one cost in a product (or service)
6 that is an assemblage of costs.

7 102. Regression analysis is one potential method by which to isolate and identify only the
8 impact of an increase in the price of Vehicle Carrier Services on prices for new purchased or leased
9 Vehicles even though such products contain a number of other inputs whose prices may be changing
10 over time. A regression model can explain how variation in the price of Vehicle Carrier Services affects
11 changes in the price of new purchased or leased Vehicles. In such models, the price of Vehicle Carrier
12 Services would be treated as an independent or explanatory variable. The model can isolate how changes
13 in the price of Vehicle Carrier Services impact the price of new Vehicles shipped by Vehicle Carrier
14 while controlling for the impact of other price-determining factors.

15 103. The precise amount of the overcharge impacting the prices of new Vehicles shipped by
16 Vehicle Carrier can be measured and quantified. Commonly used and well-accepted economic models
17 can be used to measure both the extent and the amount of the supra-competitive charge passed-through
18 the chain of distribution. Thus, the economic harm to Plaintiffs and members of the Classes can be
19 quantified.

20 104. By reason of the alleged violations of the antitrust laws and other laws alleged herein,
21 Plaintiffs and members of the Classes have sustained injury to their businesses or property, having paid
22 higher prices for Vehicle Carrier Services than they would have paid in the absence of Defendants’
23 illegal contract, combination, or conspiracy, and, as a result, have suffered damages in an amount
24 presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to
25 punish and prevent.

VIII. PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS

A. The Statute of Limitations Did Not Begin to Run Because Plaintiffs Did Not and Could Not Discover Their Claims

105. Plaintiffs repeat and re-allege the allegations set forth above.

106. Plaintiffs and members of the Classes had no knowledge of the combination or conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set forth herein, until shortly before the filing of this Complaint. Plaintiffs and members of the Classes did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until September 6, 2012, the date the JFTC announced raids of certain Defendants' offices for their role in the criminal price-fixing conspiracy alleged herein.

107. Plaintiffs and members of the Classes are consumers who had no direct contact or interaction with Defendants, and had no means from which they could have discovered the combination and conspiracy described in this Complaint before the September 6, 2012 raids alleged above.

108. No information in the public domain was available to Plaintiffs and members of the Classes prior to the announced raids on September 6, 2012 that revealed sufficient information to suggest that Defendants were involved in a criminal conspiracy to fix the prices charged for Vehicle Carrier Services. Plaintiffs and members of the Classes had no means of obtaining any facts or information concerning any aspect of Defendants' dealings with OEMs or other direct purchasers, much less the fact that they had engaged in the combination and conspiracy alleged herein.

109. For these reasons, the statute of limitations as to Plaintiffs and the Classes' claims did not begin to run, and has been tolled, with respect to the claims that Plaintiffs and members of the Classes have alleged in this Complaint.

B. Fraudulent Concealment Tolled the Statute of Limitations

110. In the alternative, application of the doctrine of fraudulent concealment tolled the statute of limitations as to the claims asserted herein by Plaintiffs and the Classes. Plaintiffs and members of the Classes did not know and could not have known of the existence of the conspiracy and unlawful

1 combination alleged herein until, at the earlier, September 6, 2012, i.e., the date the JFTC announced
2 raids of certain Defendants' offices for their role in the criminal price-fixing conspiracy alleged herein.

3 111. Before that time, Plaintiffs and members of the Classes were unaware of Defendants'
4 unlawful conduct, and did not know before then that they were paying supracompetitive prices for
5 Vehicle Carrier Services throughout the United States during the Class Period. No information, actual or
6 constructive, was ever made available to Plaintiffs and members of the Classes that even hinted to
7 Plaintiffs and members of the Classes that they were being injured by Defendants' unlawful conduct.

8 112. The affirmative acts of Defendants alleged herein, including acts in furtherance of the
9 conspiracy, were wrongfully concealed and carried out in a manner that precluded detection.

10 113. By its very nature, Defendants' anticompetitive conspiracy and unlawful combinations
11 were inherently self-concealing. Defendants met and communicated in secret and agreed to keep the
12 facts about their collusive conduct from being discovered by any member of the public or by the OEMs
13 and other direct purchasers with whom they did business.

14 114. Plaintiffs and members of the Classes could not have discovered the alleged combination
15 or conspiracy at an earlier date by the exercise of reasonable diligence because of the deceptive practices
16 and techniques of secrecy employed by Defendants and their coconspirators to avoid detection of, and to
17 fraudulently conceal, their conduct.

18 115. Because the alleged conspiracy was both self-concealing and affirmatively concealed by
19 Defendants and their co-conspirators, Plaintiffs and members of the Classes had no knowledge of the
20 alleged conspiracy, or of any facts or information that would have caused a reasonably diligent person to
21 investigate whether a conspiracy existed, until September 6, 2012, when the JFTC announced raids of
22 certain Defendants' offices for their role in the criminal price-fixing conspiracy alleged herein.

23 116. For these reasons, the statute of limitations applicable to Plaintiffs' and the Classes'
24 claims was tolled and did not begin to run until September 6, 2012.

FIRST CLAIM FOR RELIEF
Violation of Section 1 of the Sherman Act
(on behalf of Plaintiffs and the Nationwide Class)

117. Plaintiffs repeat and re-allege the allegations set forth above as if fully set forth herein.

118. Defendants and unnamed conspirators entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

119. The acts done by each of Defendants as part of, and in furtherance of, their contract, combination, or conspiracy were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of Defendants' affairs.

120. During the Class Period, Defendants and their co-conspirators entered into a continuing agreement, understanding and conspiracy in restraint of trade to artificially fix, raise, stabilize, and control prices for Vehicle Carrier Services, thereby creating anticompetitive effects. The anticompetitive acts were intentionally directed at the United States market for Vehicle Carrier Services and had a substantial and foreseeable effect on interstate commerce by raising and fixing prices for Vehicle Carrier Services throughout the United States.

121. The conspiratorial acts and combinations have caused unreasonable restraints in the market for Vehicle Carrier Services. As a result of Defendants' unlawful conduct, Plaintiffs and other similarly situated indirect purchasers in the Nationwide Class who purchased Vehicle Carrier Services have been harmed by being forced to pay inflated, supra-competitive prices for Vehicle Carrier Services.

122. In formulating and carrying out the alleged agreement, understanding and conspiracy, Defendants and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices and course of conduct set forth herein.

123. Defendants' conspiracy had the following effects, among others:

- (a) Price competition in the market for Vehicle Carrier Services has been restrained, suppressed, and/or eliminated in the United States;

(b) Prices for Vehicle Carrier Services provided by Defendants and their coconspirators have been fixed, raised, maintained, and stabilized at artificially high, noncompetitive levels throughout the United States; and

(c) Plaintiffs and members of the Nationwide Class who purchased Vehicle Carrier Services indirectly from Defendants and their co-conspirators have been deprived of the benefits of free and open competition.

124. Plaintiffs and members of the Nationwide Class have been injured and will continue to be injured in their business and property by paying more for Vehicle Carrier Services purchased indirectly from Defendants and the co-conspirators than they would have paid and will pay in the absence of the conspiracy.

125. The alleged contract, combination, or conspiracy is a per se violation of the federal antitrust laws. Plaintiffs and members of the Nationwide Class are entitled to an injunction against Defendants, preventing and restraining the violations alleged herein.

SECOND CLAIM FOR RELIEF
Violation of State Antitrust Statutes
(on behalf of Plaintiffs and the Damages Class)

126. Plaintiffs repeat and re-allege the allegations set forth above as if fully set forth herein.

127. During the Class Period, Defendants and their co-conspirators engaged in a continuing contract, combination or conspiracy with respect to the provision of Vehicle Carrier Services in unreasonable restraint of trade and commerce and in violation of the various state antitrust and other statutes set forth below.

128. The contract, combination, or conspiracy consisted of an agreement among Defendants and their co-conspirators to fix, raise, inflate, stabilize, and/or maintain at artificially supra-competitive prices for Vehicle Carrier Services and to allocate customers for Vehicle Carrier Services in the United States.

129. In formulating and effectuating this conspiracy, Defendants and their coconspirators performed acts in furtherance of the combination and conspiracy, including:

- 1 (a) participating in meetings and conversations among themselves in the United States and
2 elsewhere during which they agreed to price Vehicle Carrier Services at certain levels,
3 and otherwise to fix, increase, inflate, maintain, or stabilize effective prices paid by
4 Plaintiffs and members of the Damages Class with respect to Vehicle Carrier Services
5 provided in the United States;
- 6 (b) allocating customers and markets for Vehicle Carrier Services provided in the United
7 States in furtherance of their agreements; and
- 8 (c) participating in meetings and conversations among themselves in the United States and
9 elsewhere to implement, adhere to, and police the unlawful agreements they reached.

10 130. Defendants and their co-conspirators engaged in the actions described above for the
11 purpose of carrying out their unlawful agreements to fix, increase, maintain, or stabilize prices and to
12 allocate customers with respect to Vehicle Carrier Services.

13 131. Defendants' anticompetitive acts described above were knowing, willful and constitute
14 violations or flagrant violations of the following state antitrust statutes.

15 132. Defendants have entered into an unlawful agreement in restraint of trade in violation of
16 the Arizona Revised Statutes, §§ 44-1401, *et seq.*

- 17 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
18 Services price competition was restrained, suppressed, and eliminated throughout
19 Arizona; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized
20 at artificially high levels throughout Arizona; (3) Plaintiffs and members of the Damages
21 Class were deprived of free and open competition; and (4) Plaintiffs and members of the
22 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
23 Services.
- 24 (b) During the Class Period, Defendants' illegal conduct substantially affected Arizona
25 commerce.
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1 (c) As a direct and proximate result of defendants' unlawful conduct, Plaintiffs and members
2 of the Damages Class have been injured in their business and property and are threatened
3 with further injury.

4 (d) By reason of the foregoing, Defendants entered into agreements in restraint of trade in
5 violation of Ariz. Rev. Stat. §§ 44-1401, *et seq.* Accordingly, Plaintiffs and members of
6 the Damages Class seek all forms of relief available under Ariz. Rev. Stat. §§ 44-1401, *et*
7 *seq.*

8 133. Defendants have entered into an unlawful agreement in restraint of trade in violation of
9 the California Business and Professions Code, §§ 16700, *et seq.*

10 (a) During the Class Period, Defendants and their co-conspirators entered into and engaged
11 in a continuing unlawful trust in restraint of the trade and commerce described above in
12 violation of Section 16720, California Business and Professions Code. Defendants, and
13 each of them, have acted in violation of Section 16720 to fix, raise, stabilize, and
14 maintain prices of, and allocate markets for, Vehicle Carrier Services at supra-
15 competitive levels.

16 (b) The aforesaid violations of Section 16720, California Business and Professions Code,
17 consisted, without limitation, of a continuing unlawful trust and concert of action among
18 Defendants and their co-conspirators, the substantial terms of which were to fix, raise,
19 maintain, and stabilize the prices of, and to allocate markets for, Vehicle Carrier Services.

20 (c) For the purpose of forming and effectuating the unlawful trust, Defendants and their co-
21 conspirators have done those things which they combined and conspired to do, including
22 but not limited to the acts, practices and course of conduct set forth above and the
23 following: (1) Fixing, raising, stabilizing, and pegging the price of Vehicle Carrier
24 Services; and (2) Allocating among themselves the provision of Vehicle Carrier Services.

25 (d) The combination and conspiracy alleged herein has had, inter alia, the following effects:
26 (1) Price competition in the provision of Vehicle Carrier Services has been restrained,

1 suppressed, and/or eliminated in the State of California; (2) Prices for Vehicle Carrier
2 Services provided by Defendants and their co-conspirators have been fixed, raised,
3 stabilized, and pegged at artificially high, non-competitive levels in the State of
4 California and throughout the United States; and (3) Those who purchased Vehicle
5 Carrier Services directly or indirectly from Defendants and their co-conspirators have
6 been deprived of the benefit of free and open competition.

7 (e) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
8 members of the Damages Class have been injured in their business and property in that
9 they paid more for Vehicle Carrier Services than they otherwise would have paid in the
10 absence of Defendants' unlawful conduct. As a result of Defendants' violation of Section
11 16720 of the California Business and Professions Code, Plaintiffs and members of the
12 Damages Class seek treble damages and their cost of suit, including a reasonable
13 attorney's fee, pursuant to Section 16750(a) of the California Business and Professions
14 Code.

15 134. Defendants have entered into an unlawful agreement in restraint of trade in violation of
16 the District of Columbia Code Annotated §§ 28-4501, *et seq.*

17 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
18 Services price competition was restrained, suppressed, and eliminated throughout the
19 District of Columbia; (2) Vehicle Carrier Services prices were raised, fixed, maintained
20 and stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs
21 and members of the Damages Class were deprived of free and open competition; and (4)
22 Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated
23 prices for Vehicle Carrier Services.

24 (b) During the Class Period, Defendants' illegal conduct substantially affected District of
25 Columbia commerce.

1 (c) As a direct and proximate result of defendants' unlawful conduct, Plaintiffs and members
2 of the Damages Class have been injured in their business and property and are threatened
3 with further injury.

4 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
5 in violation of District of Columbia Code Ann. §§ 28-4501, *et seq.* Accordingly,
6 Plaintiffs and members of the Damages Class seek all forms of relief available under
7 District of Columbia Code Ann. §§ 28-4501, *et seq.*

8 135. Defendants have entered into an unlawful agreement in restraint of trade in violation of
9 the Iowa Code §§ 553.1, *et seq.*

10 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
11 Services price competition was restrained, suppressed, and eliminated throughout Iowa;
12 (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at
13 artificially high levels throughout Iowa; (3) Plaintiffs and members of the Damages Class
14 were deprived of free and open competition; and (4) Plaintiffs and members of the
15 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
16 Services.

17 (b) During the Class Period, Defendants' illegal conduct substantially affected Iowa
18 commerce.

19 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
20 members of the Damages Class have been injured in their business and property and are
21 threatened with further injury.

22 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
23 in violation of Iowa Code §§ 553.1, *et seq.* Accordingly, Plaintiffs and members of the
24 Damages Class seek all forms of relief available under Iowa Code §§ 553.1, *et seq.*

25 136. Defendants have entered into an unlawful agreement in restraint of trade in violation of
26 the Kansas Statutes Annotated, §§ 50-101, *et seq.*

1 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
2 Services price competition was restrained, suppressed, and eliminated throughout
3 Kansas; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized
4 at artificially high levels throughout Kansas; (3) Plaintiffs and members of the Damages
5 Class were deprived of free and open competition; and (4) Plaintiffs and members of the
6 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
7 Services.

8 (b) During the Class Period, Defendants' illegal conduct substantially affected Kansas
9 commerce.

10 (c) As a direct and proximate result of defendants' unlawful conduct, Plaintiffs and members
11 of the Damages Class have been injured in their business and property and are threatened
12 with further injury.

13 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
14 in violation of Kansas Stat. Ann. §§ 50-101, *et seq.* Accordingly, Plaintiffs and members
15 of the Damages Class seek all forms of relief available under Kansas Stat. Ann. §§ 50-
16 101, *et seq.*

17 137. Defendants have entered into an unlawful agreement in restraint of trade in violation of
18 the Maine Revised Statutes, Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

19 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
20 Services price competition was restrained, suppressed, and eliminated throughout Maine;
21 (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at
22 artificially high levels throughout Maine; (3) Plaintiffs and members of the Damages
23 Class were deprived of free and open competition; and (4) Plaintiffs and members of the
24 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
25 Services.

1 (b) During the Class Period, Defendants' illegal conduct substantially affected Maine
2 commerce.

3 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
4 members of the Damages Class have been injured in their business and property and are
5 threatened with further injury.

6 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
7 in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.* Accordingly, Plaintiffs and
8 members of the Damages Class seek all relief available under Maine Rev. Stat. Ann. 10,
9 §§ 1101, *et seq.*

10 138. Defendants have entered into an unlawful agreement in restraint of trade in violation of
11 the Michigan Compiled Laws Annotated §§ 445.771, *et seq.*

12 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
13 Services price competition was restrained, suppressed, and eliminated throughout
14 Michigan; (2) Vehicle Carrier Services prices were raised, fixed, maintained and
15 stabilized at artificially high levels throughout Michigan; (3) Plaintiffs and members of
16 the Damages Class were deprived of free and open competition; and (4) Plaintiffs and
17 members of the Damages Class paid supra-competitive, artificially inflated prices for
18 Vehicle Carrier Services.

19 (b) During the Class Period, Defendants' illegal conduct substantially affected Michigan
20 commerce.

21 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
22 members of the Damages Class have been injured in their business and property and are
23 threatened with further injury.

24 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
25 in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq.* Accordingly, Plaintiffs
26

1 and members of the Damages Class seek all relief available under Michigan Comp. Laws
2 Ann. §§ 445.771, *et seq.*

3 139. Defendants have entered into an unlawful agreement in restraint of trade in violation of
4 the Minnesota Annotated Statutes §§ 325D.49, *et seq.*

5 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
6 Services price competition was restrained, suppressed, and eliminated throughout
7 Minnesota; (2) Vehicle Carrier Services prices were raised, fixed, maintained and
8 stabilized at artificially high levels throughout Minnesota; (3) Plaintiffs and members of
9 the Damages Class were deprived of free and open competition; and (4) Plaintiffs and
10 members of the Damages Class paid supra-competitive, artificially inflated prices for
11 Vehicle Carrier Services.

12 (b) During the Class Period, Defendants' illegal conduct substantially affected Minnesota
13 commerce.

14 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
15 members of the Damages Class have been injured in their business and property and are
16 threatened with further injury.

17 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
18 in violation of Minnesota Stat. §§ 325D.49, *et seq.* Accordingly, Plaintiffs and members
19 of the Damages Class seek all relief available under Minnesota Stat. §§ 325D.49, *et seq.*

20 140. Defendants have entered into an unlawful agreement in restraint of trade in violation of
21 the Mississippi Code Annotated §§ 75-21-1, *et seq.*

22 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
23 Services price competition was restrained, suppressed, and eliminated throughout
24 Mississippi; (2) Vehicle Carrier Services prices were raised, fixed, maintained and
25 stabilized at artificially high levels throughout Mississippi; (3) Plaintiffs and members of
26 the Damages Class were deprived of free and open competition; and (4) Plaintiffs and

1 members of the Damages Class paid supra-competitive, artificially inflated prices for
2 Vehicle Carrier Services.

3 (b) During the Class Period, Defendants' illegal conduct substantially affected Mississippi
4 commerce.

5 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
6 members of the Damages Class have been injured in their business and property and are
7 threatened with further injury.

8 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
9 in violation of Mississippi Code Ann. § 75-21-1, *et seq.* Accordingly, Plaintiffs and
10 members of the Damages Class seek all relief available under Mississippi Code Ann. §
11 75-21-1, *et seq.*

12 141. Defendants have entered into an unlawful agreement in restraint of trade in violation of
13 the Nebraska Revised Statutes §§ 59-801, *et seq.*

14 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
15 Services price competition was restrained, suppressed, and eliminated throughout
16 Nebraska; (2) Vehicle Carrier Services prices were raised, fixed, maintained and
17 stabilized at artificially high levels throughout Nebraska; (3) Plaintiffs and members of
18 the Damages Class were deprived of free and open competition; and (4) Plaintiffs and
19 members of the Damages Class paid supra-competitive, artificially inflated prices for
20 Vehicle Carrier Services.

21 (b) During the Class Period, Defendants' illegal conduct substantially affected Nebraska
22 commerce.

23 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
24 members of the Damages Class have been injured in their business and property and are
25 threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nebraska Revised Statutes §§ 59-801, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nebraska Revised Statutes §§ 59-801, *et seq.*

142. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nevada Revised Statutes Annotated §§ 598A.010, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Nevada; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Nevada; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct substantially affected Nevada commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nevada Rev. Stat. Ann. §§ 598A, *et seq.*

143. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Hampshire Revised Statutes §§ 356:1, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New

1 Hampshire; (2) Vehicle Carrier Services prices were raised, fixed, maintained and
2 stabilized at artificially high levels throughout New Hampshire; (3) Plaintiffs and
3 members of the Damages Class were deprived of free and open competition; and (4)
4 Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated
5 prices for Vehicle Carrier Services.

6 (b) During the Class Period, Defendants' illegal conduct substantially affected New
7 Hampshire commerce.

8 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
9 members of the Damages Class have been injured in their business and property and are
10 threatened with further injury.

11 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
12 in violation of New Hampshire Revised Statutes §§ 356:1, *et seq.* Accordingly, Plaintiffs
13 and members of the Damages Class seek all relief available under New Hampshire
14 Revised Statutes §§ 356:1, *et seq.*

15 144. Defendants have entered into an unlawful agreement in restraint of trade in violation of
16 the New Mexico Statutes Annotated §§ 57-1-1, *et seq.*

17 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
18 Services price competition was restrained, suppressed, and eliminated throughout New
19 Mexico; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized
20 at artificially high levels throughout New Mexico; (3) Plaintiffs and members of the
21 Damages Class were deprived of free and open competition; and (4) Plaintiffs and
22 members of the Damages Class paid supra-competitive, artificially inflated prices for
23 Vehicle Carrier Services.

24 (b) During the Class Period, Defendants' illegal conduct substantially affected New Mexico
25 commerce.

1 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
2 members of the Damages Class have been injured in their business and property and are
3 threatened with further injury.

4 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
5 in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.* Accordingly, Plaintiffs and
6 members of the Damages Class seek all relief available under New Mexico Stat. Ann. §§
7 57-1-1, *et seq.*

8 145. Defendants have entered into an unlawful agreement in restraint of trade in violation of
9 the New York General Business Laws §§ 340, *et seq.*

10 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
11 Services price competition was restrained, suppressed, and eliminated throughout New
12 York; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at
13 artificially high levels throughout New York; (3) Plaintiffs and members of the Damages
14 Class were deprived of free and open competition; and (4) Plaintiffs and members of the
15 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
16 Services when they purchased Vehicles transported by Vehicle Carrier Services, or
17 purchased products that were otherwise of lower quality, than would have been absent
18 Defendants' illegal acts, or were unable to purchase products that they would have
19 otherwise have purchased absent the illegal conduct.

20 (b) During the Class Period, Defendants' illegal conduct substantially affected New York
21 commerce.

22 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
23 members of the Damages Class have been injured in their business and property and are
24 threatened with further injury.

25 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
26 in violation of the New York Donnelly Act, §§ 340, *et seq.* The conduct set forth above is

1 a per se violation of the Act. Accordingly, Plaintiffs and members of the Damages Class
2 seek all relief available under New York Gen. Bus. Law §§ 340, *et seq.*

3 146. Defendants have entered into an unlawful agreement in restraint of trade in violation of
4 the North Carolina General Statutes §§ 75-1, *et seq.*

5 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
6 Services price competition was restrained, suppressed, and eliminated throughout North
7 Carolina; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized
8 at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the
9 Damages Class were deprived of free and open competition; and (4) Plaintiffs and
10 members of the Damages Class paid supra-competitive, artificially inflated prices for
11 Vehicle Carrier Services.

12 (b) During the Class Period, Defendants' illegal conduct substantially affected North
13 Carolina commerce.

14 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
15 members of the Damages Class have been injured in their business and property and are
16 threatened with further injury.

17 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
18 in violation of North Carolina Gen. Stat. §§ 75-1, *et seq.* Accordingly, Plaintiffs and
19 members of the Damages Class seek all relief available under North Carolina Gen. Stat.
20 §§ 75-1, *et seq.*

21 147. Defendants have entered into an unlawful agreement in restraint of trade in violation of
22 the North Dakota Century Code §§ 51-08.1-01, *et seq.*

23 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
24 Services price competition was restrained, suppressed, and eliminated throughout North
25 Dakota; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized
26 at artificially high levels throughout North Dakota; (3) Plaintiffs and members of the

1 Damages Class were deprived of free and open competition; and (4) Plaintiffs and
2 members of the Damages Class paid supra-competitive, artificially inflated prices for
3 Vehicle Carrier Services.

4 (b) During the Class Period, Defendants' illegal conduct had a substantial effect on North
5 Dakota commerce.

6 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
7 members of the Damages Class have been injured in their business and property and are
8 threatened with further injury.

9 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
10 in violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq.* Accordingly, Plaintiffs
11 and members of the Damages Class seek all relief available under North Dakota Cent.
12 Code §§ 51-08.1-01, *et seq.*

13 148. Defendants have entered into an unlawful agreement in restraint of trade in violation of
14 the Oregon Revised Statutes §§ 646.705, *et seq.*

15 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
16 Services price competition was restrained, suppressed, and eliminated throughout
17 Oregon; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized
18 at artificially high levels throughout Oregon; (3) Plaintiffs and members of the Damages
19 Class were deprived of free and open competition; and (4) Plaintiffs and members of the
20 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
21 Services.

22 (b) During the Class Period, Defendants' illegal conduct had a substantial effect on Oregon
23 commerce.

24 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
25 members of the Damages Class have been injured in their business and property and are
26 threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Oregon Revised Statutes §§ 646.705, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Oregon Revised Statutes §§ 646.705, *et seq.*

149. Defendants have entered into an unlawful agreement in restraint of trade in violation of the South Dakota Codified Laws §§ 37-1-3.1, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout South Dakota; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout South Dakota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on South Dakota commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under South Dakota Codified Laws Ann. §§ 37-1, *et seq.*

150. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Tennessee Code Annotated §§ 47-25-101, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout

1 Tennessee; (2) Vehicle Carrier Services prices were raised, fixed, maintained and
2 stabilized at artificially high levels throughout Tennessee; (3) Plaintiffs and members of
3 the Damages Class were deprived of free and open competition; and (4) Plaintiffs and
4 members of the Damages Class paid supra-competitive, artificially inflated prices for
5 Vehicle Carrier Services.

6 (b) During the Class Period, Defendants' illegal conduct had a substantial effect on
7 Tennessee commerce.

8 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
9 members of the Damages Class have been injured in their business and property and are
10 threatened with further injury.

11 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
12 in violation of Tennessee Code Ann. §§ 47-25-101, *et seq.* Accordingly, Plaintiffs and
13 members of the Damages Class seek all relief available under Tennessee Code Ann. §§
14 47-25-101, *et seq.*

15 151. Defendants have entered into an unlawful agreement in restraint of trade in violation of
16 the Utah Code Annotated §§ 76-10-911, *et seq.*

17 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
18 Services price competition was restrained, suppressed, and eliminated throughout Utah;
19 (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at
20 artificially high levels throughout Utah; (3) Plaintiffs and members of the Damages Class
21 were deprived of free and open competition; and (4) Plaintiffs and members of the
22 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
23 Services.

24 (b) During the Class Period, Defendants' illegal conduct had a substantial effect on Utah
25 commerce.

1 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
2 members of the Damages Class have been injured in their business and property and are
3 threatened with further injury.

4 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
5 in violation of Utah Code Annotated §§ 76-10-911, *et seq.* Accordingly, Plaintiffs and
6 members of the Damages Class seek all relief available under Utah Code Annotated §§
7 76-10-911, *et seq.*

8 152. Defendants have entered into an unlawful agreement in restraint of trade in violation of
9 the Vermont Stat. Ann. 9 §§ 2453, *et seq.*

10 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
11 Services price competition was restrained, suppressed, and eliminated throughout
12 Vermont; (2) Vehicle Carrier Services prices were raised, fixed, maintained and
13 stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of
14 the Damages Class were deprived of free and open competition; and (4) Plaintiffs and
15 members of the Damages Class paid supra-competitive, artificially inflated prices for
16 Vehicle Carrier Services.

17 (b) During the Class Period, Defendants' illegal conduct had a substantial effect on Vermont
18 commerce.

19 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
20 members of the Damages Class have been injured in their business and property and are
21 threatened with further injury.

22 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
23 in violation of Vermont Stat. Ann. 9 §§ 2453, *et seq.* Accordingly, Plaintiffs and
24 members of the Damages Class seek all relief available under Vermont Stat. Ann. 9 §§
25 2453, *et seq.*

1 153. Defendants have entered into an unlawful agreement in restraint of trade in violation of
2 the West Virginia Code §§ 47-18-1, *et seq.*

3 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
4 Services price competition was restrained, suppressed, and eliminated throughout West
5 Virginia; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized
6 at artificially high levels throughout West Virginia; (3) Plaintiffs and members of the
7 Damages Class were deprived of free and open competition; and (4) Plaintiffs and
8 members of the Damages Class paid supra-competitive, artificially inflated prices for
9 Vehicle Carrier Services.

10 (b) During the Class Period, Defendants' illegal conduct had a substantial effect on West
11 Virginia commerce.

12 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
13 members of the Damages Class have been injured in their business and property and are
14 threatened with further injury.

15 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
16 in violation of West Virginia Code §§ 47-18-1, *et seq.* Accordingly, Plaintiffs and
17 members of the Damages Class seek all relief available under West Virginia Code §§ 47-
18 18-1, *et seq.*

19 154. Defendants have entered into an unlawful agreement in restraint of trade in violation of
20 the Wisconsin Statutes §§ 133.01, *et seq.*

21 (a) Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier
22 Services price competition was restrained, suppressed, and eliminated throughout
23 Wisconsin; (2) Vehicle Carrier Services prices were raised, fixed, maintained and
24 stabilized at artificially high levels throughout Wisconsin; (3) Plaintiffs and members of
25 the Damages Class were deprived of free and open competition; and (4) Plaintiffs and
26

1 members of the Damages Class paid supra-competitive, artificially inflated prices for
2 Vehicle Carrier Services.

3 (b) During the Class Period, Defendants' illegal conduct had a substantial effect on
4 Wisconsin commerce.

5 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
6 members of the Damages Class have been injured in their business and property and are
7 threatened with further injury.

8 (d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade
9 in violation of Wisconsin Stat. §§ 133.01, *et seq.* Accordingly, Plaintiffs and members of
10 the Damages Class seek all relief available under Wisconsin Stat. §§ 133.01, *et seq.*

11 155. Plaintiffs and members of the Damages Class in each of the above states have been
12 injured in their business and property by reason of Defendants' unlawful combination, contract,
13 conspiracy and agreement. Plaintiffs and members of the Damages Class have paid more for Vehicle
14 Carrier Services than they otherwise would have paid in the absence of Defendants' unlawful conduct.
15 This injury is of the type the antitrust laws of the above states were designed to prevent and flows from
16 that which makes Defendants' conduct unlawful.

17 156. In addition, Defendants have profited significantly from the aforesaid conspiracy.
18 Defendants' profits derived from their anticompetitive conduct come at the expense and detriment of
19 members of the Plaintiffs and members of the Damages Class. Accordingly, Plaintiffs and members of
20 the Damages Class in each of the above jurisdictions seek damages (including statutory damages where
21 applicable), to be trebled or otherwise increased as permitted by a particular jurisdiction's antitrust law,
22 and costs of suit, including reasonable attorneys' fees, to the extent permitted by the above state laws.

23 **THIRD CLAIM FOR RELIEF**
24 **Violation of State Consumer Protection Statutes**
(on behalf of Plaintiffs and the Damages Class)

25 157. Plaintiffs repeat and re-allege the allegations set forth above as if fully set forth herein.
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1 158. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or
2 fraudulent acts or practices in violation of the state consumer protection and unfair competition statutes
3 listed below.

4 159. Defendants have engaged in unfair competition or unfair, unconscionable, deceptive or
5 fraudulent acts or practices in violation of California Business and Professions Code § 17200, *et seq.*

6 (a) During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier
7 Services in California, and committed and continue to commit acts of unfair competition,
8 as defined by Sections 17200, *et seq.* of the California Business and Professions Code, by
9 engaging in the acts and practices specified above.

10 (b) This claim is instituted pursuant to Sections 17203 and 17204 of the California Business
11 and Professions Code, to obtain restitution from these Defendants for acts, as alleged
12 herein, that violated Section 17200 of the California Business and Professions Code,
13 commonly known as the Unfair Competition Law.

14 (c) Defendants' conduct as alleged herein violated Section 17200. The acts, omissions,
15 misrepresentations, practices and non-disclosures of Defendants, as alleged herein,
16 constituted a common, continuous, and continuing course of conduct of unfair
17 competition by means of unfair, unlawful, and/or fraudulent business acts or practices
18 within the meaning of California Business and Professions Code, Section 17200, *et seq.*,
19 including, but not limited to, the following: (1) the violations of Section 1 of the Sherman
20 Act, as set forth above; (2) the violations of Section 16720, *et seq.*, of the California
21 Business and Professions Code, set forth above;

22 (d) Defendants' acts, omissions, misrepresentations, practices, and non-disclosures, as
23 described above, whether or not in violation of Section 16720, *et seq.*, of the California
24 Business and Professions Code, and whether or not concerted or independent acts, are
25 otherwise unfair, unconscionable, unlawful or fraudulent;

- (e) Defendants' acts or practices are unfair to purchasers of Vehicle Carrier Services (or Vehicles transported by them) in the State of California within the meaning of Section 17200, California Business and Professions Code; and
- (f) Defendants' acts and practices are fraudulent or deceptive within the meaning of Section 17200 of the California Business and Professions Code.
- (g) Plaintiffs and members of the Damages Class are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business acts or practices.
- (h) The illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future.
- (i) The unlawful and unfair business practices of Defendants, and each of them, as described above, have caused and continue to cause Plaintiffs and members of the Damages Class to pay supra-competitive and artificially-inflated prices for Vehicle Carrier Services (or Vehicles transported by them). Plaintiffs and members of the Damages Class suffered injury in fact and lost money or property as a result of such unfair competition.
- (j) The conduct of Defendants as alleged in this Complaint violates Section 17200 of the California Business and Professions Code.
- (k) As alleged in this Complaint, Defendants and their co-conspirators have been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair competition. Plaintiffs and members of the Damages Class are accordingly entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204.

160. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of District of Columbia Code § 28-3901, *et seq.*

- 1 (a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting,
2 fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
3 prices at which Vehicle Carrier Services were sold, distributed or obtained in the District
4 of Columbia.
- 5 (b) The foregoing conduct constitutes “unlawful trade practices,” within the meaning of D.C.
6 Code § 28-3904. Plaintiffs were not aware of Defendants’ price-fixing conspiracy and
7 were therefore unaware that they were being unfairly and illegally overcharged. There
8 was a gross disparity of bargaining power between the parties with respect to the price
9 charged by Defendants for Vehicle Carrier Services. Defendants had the sole power to set
10 that price and Plaintiffs had no power to negotiate a lower price. Moreover, Plaintiffs
11 lacked any meaningful choice in purchasing Vehicle Carrier Services because he was
12 unaware of the unlawful overcharge and there was no alternative source of supply
13 through which Plaintiffs could avoid the overcharges. Defendants’ conduct with regard to
14 sales of Vehicle Carrier Services, including their illegal conspiracy to secretly fix the
15 price of Vehicle Carrier Services at supra-competitive levels and overcharge consumers,
16 was substantively unconscionable because it was one-sided and unfairly benefited
17 Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair
18 advantage of Plaintiff. The suppression of competition that has resulted from Defendants’
19 conspiracy has ultimately resulted in unconscionably higher prices for purchasers so that
20 there was a gross disparity between the price paid and the value received for Vehicle
21 Carrier Services.
- 22 (c) Defendants’ unlawful conduct had the following effects: (1) Vehicle Carrier Services
23 price competition was restrained, suppressed, and eliminated throughout the District of
24 Columbia; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and
25 stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs and
26 the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the
27

1 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
2 Services.

3 (d) As a direct and proximate result of Defendants' conduct, Plaintiffs and members of the
4 Damages Class have been injured and are threatened with further injury. Defendants have
5 engaged in unfair competition or unfair or deceptive acts or practices in violation of
6 District of Columbia Code § 28-3901, *et seq.*, and, accordingly, Plaintiffs and members
7 of the Damages Class seek all relief available under that statute.

8 161. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive
9 acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§
10 501.201, *et seq.*

11 (a) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services
12 price competition was restrained, suppressed, and eliminated throughout Florida; (2)
13 Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at
14 artificially high levels throughout Florida; (3) Plaintiffs and members of the Damages
15 Class were deprived of free and open competition; and (4) Plaintiffs and members of the
16 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
17 Services.

18 (b) During the Class Period, Defendants' illegal conduct substantially affected Florida
19 commerce and consumers.

20 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
21 members of the Damages Class have been injured and are threatened with further injury.

22 (d) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in
23 violation of Florida Stat. § 501.201, *et seq.*, and, accordingly, Plaintiffs and members of
24 the Damages Class seek all relief available under that statute.

25 162. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive
26 acts or practices in violation of the Hawaii Revised Statutes Annotated §§ 480-1, *et seq.*

1 (a) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services
2 price competition was restrained, suppressed, and eliminated throughout Hawaii; (2)
3 Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at
4 artificially high levels throughout Hawaii; (3) Plaintiffs and members of the Damages
5 Class were deprived of free and open competition; and (4) Plaintiffs and members of the
6 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
7 Services.

8 (b) During the Class Period, Defendants' illegal conduct substantially affected Hawaii
9 commerce and consumers.

10 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
11 members of the Damages Class have been injured and are threatened with further injury.

12 (d) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in
13 violation of Hawaii Rev. Stat. § 480, *et seq.*, and, accordingly, Plaintiffs and members of
14 the Damages Class seek all relief available under that statute.

15 163. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive
16 acts or practices in violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et*
17 *seq.*

18 (a) Missouri Plaintiffs and members of this Damages Class purchased Vehicle Carrier
19 Services for personal, family, or household purposes.

20 (b) Defendants engaged in the conduct described herein in connection with the sale of
21 Vehicle Carrier Services in trade or commerce in a market that includes Missouri.

22 (c) Defendants agreed to, and did in fact affect, fix, control, and/or maintain, at artificial and
23 non-competitive levels, the prices at which Vehicle Carrier Services were sold,
24 distributed, or obtained in Missouri, which conduct constituted unfair practices in that it
25 was unlawful under federal and state law, violated public policy, was unethical,
26

1 oppressive and unscrupulous, and caused substantial injury to Plaintiffs and members of
2 the Damages Class.

3 (d) Defendants concealed, suppressed, and omitted to disclose material facts to Plaintiffs and
4 members of the Damages Class concerning Defendants' unlawful activities and
5 artificially inflated prices for Vehicle Carrier Services. The concealed, suppressed, and
6 omitted facts would have been important to Plaintiffs and members of the Damages Class
7 as they related to the cost of Vehicle Carrier Services they purchased.

8 (e) Defendants misrepresented the real cause of price increases and/or the absence of price
9 reductions in Vehicle Carrier Services by making public statements that were not in
10 accord with the facts.

11 (f) Defendants' statements and conduct concerning the price of Vehicle Carrier Services
12 were deceptive as they had the tendency or capacity to mislead Plaintiffs and members of
13 the Damages Class to believe that they were purchasing Vehicle Carrier Services at
14 prices established by a free and fair market.

15 (g) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services
16 price competition was restrained, suppressed, and eliminated throughout Missouri; (2)
17 Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at
18 artificially high levels throughout Missouri; (3) Plaintiffs and members of the Damages
19 Class were deprived of free and open competition; and (4) Plaintiffs and members of the
20 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
21 Services.

22 (h) The foregoing acts and practices constituted unlawful practices in violation of the
23 Missouri Merchandising Practices Act.

24 (i) As a direct and proximate result of the above-described unlawful practices, Plaintiffs and
25 members of the Damages Class suffered ascertainable loss of money or property.

(j) Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Missouri's Merchandising Practices Act, specifically Mo. Rev. Stat. § 407.020, which prohibits "the act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce....," as further interpreted by the Missouri Code of State Regulations, 15 CSR 60-7.010, *et seq.*, 15 CSR 60-8.010, *et seq.*, and 15 CSR 60-9.010, *et seq.*, and Mo. Rev. Stat. § 407.025, which provides for the relief sought in this count.

164. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1970, Mont. Code, §§ 30-14-103, *et seq.*, and §§ 30-14-201, *et seq.*

(a) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Montana; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Montana; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

(b) During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in Montana, and Defendants' illegal conduct substantially affected Montana commerce and consumers.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury.

(d) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code, §§ 30-14-103, *et seq.*, and §§ 30-14-201, *et seq.*, and,

1 accordingly, Plaintiffs and members of the Damages Class seek all relief available under
2 that statute.

3 165. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive
4 acts or practices in violation of the New Mexico Stat. § 57-12-1, *et seq.*

5 (a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting,
6 fixing, controlling and/or maintaining at non-competitive and artificially inflated levels,
7 the prices at which Vehicle Carrier Services were sold, distributed or obtained in New
8 Mexico and took efforts to conceal their agreements from Plaintiffs and members of the
9 Damages Class.

10 (b) The aforementioned conduct on the part of Defendants constituted “unconscionable trade
11 practices,” in violation of N.M.S.A. Stat. § 57-12-3, in that such conduct, *inter alia*,
12 resulted in a gross disparity between the value received by Plaintiffs and members of the
13 Damages Class and the prices paid by them for Vehicle Carrier Services as set forth in
14 N.M.S.A., § 57-12-2E. Plaintiffs were not aware of Defendants’ price-fixing conspiracy
15 and were therefore unaware that they were being unfairly and illegally overcharged.
16 There was a gross disparity of bargaining power between the parties with respect to the
17 price charged by Defendants for Vehicle Carrier Services. Defendants had the sole power
18 to set that price and Plaintiffs had no power to negotiate a lower price. Moreover,
19 Plaintiffs lacked any meaningful choice in purchasing Vehicle Carrier Services because
20 he was unaware of the unlawful overcharge and there was no alternative source of supply
21 through which Plaintiffs could avoid the overcharges. Defendants’ conduct with regard to
22 sales of Vehicle Carrier Services, including their illegal conspiracy to secretly fix the
23 price of Vehicle Carrier Services at supra-competitive levels and overcharge consumers,
24 was substantively unconscionable because it was one-sided and unfairly benefited
25 Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair
26 advantage of Plaintiff. The suppression of competition that has resulted from Defendants’
27

1 conspiracy has ultimately resulted in unconscionably higher prices for consumers so that
2 there was a gross disparity between the price paid and the value received for Vehicle
3 Carrier Services.

4 (c) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services
5 price competition was restrained, suppressed, and eliminated throughout New Mexico;
6 (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at
7 artificially high levels throughout New Mexico; (3) Plaintiffs and members of the
8 Damages Class were deprived of free and open competition; and (4) Plaintiffs and
9 members of the Damages Class paid supra-competitive, artificially inflated prices for
10 Vehicle Carrier Services.

11 (d) During the Class Period, Defendants' illegal conduct substantially affected New Mexico
12 commerce and consumers.

13 (e) As a direct and proximate result of the unlawful conduct of Defendants, Plaintiffs and
14 members of the Damages Class have been injured and are threatened with further injury.

15 (f) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in
16 violation of New Mexico Stat. § 57-12-1, *et seq.*, and, accordingly, Plaintiffs and
17 members of the Damages Class seek all relief available under that statute.

18 166. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive
19 acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

20 (a) Defendants agree to, and did in fact, act in restraint of trade or commerce by affecting,
21 fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices
22 at which Vehicle Carrier Services were sold, distributed or obtained in New York and
23 took efforts to conceal their agreements from Plaintiffs and members of the Damages
24 Class.

25 (b) Defendants and their co-conspirators made public statements about the prices of Vehicle
26 Carrier Services that either omitted material information that rendered the statements that
27

1 they made materially misleading or affirmatively misrepresented the real cause of price
2 increases for Vehicle Carrier Services; and Defendants alone possessed material
3 information that was relevant to consumers, but failed to provide the information.

4 (c) Because of Defendants' unlawful trade practices in the State of New York, New York
5 consumer class members who indirectly purchased Vehicle Carrier Services were misled
6 to believe that they were paying a fair price for Vehicle Carrier Services or the price
7 increases for Vehicle Carrier Services were for valid business reasons; and similarly
8 situated consumers were potentially affected by Defendants' conspiracy.

9 (d) Defendants knew that their unlawful trade practices with respect to pricing Vehicle
10 Carrier Services would have an impact on New York consumers and not just Defendants'
11 direct customers.

12 (e) Defendants knew that their unlawful trade practices with respect to pricing Vehicle
13 Carrier Services would have a broad impact, causing consumer class members who
14 indirectly purchased Vehicle Carrier Services to be injured by paying more for Vehicle
15 Carrier Services than they would have paid in the absence of Defendants' unlawful trade
16 acts and practices.

17 (f) The conduct of Defendants described herein constitutes consumer-oriented deceptive acts
18 or practices within the meaning of N.Y. Gen. Bus. Law § 349, which resulted in
19 consumer injury and broad adverse impact on the public at large, and harmed the public
20 interest of New York State in an honest marketplace in which economic activity is
21 conducted in a competitive manner.

22 (g) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services
23 price competition was restrained, suppressed, and eliminated throughout New York; (2)
24 Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at
25 artificially high levels throughout New York; (3) Plaintiffs and members of the Damages
26 Class were deprived of free and open competition; and (4) Plaintiffs and members of the

1 Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier
2 Services.

3 (h) During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier
4 Services in New York, and Defendants' illegal conduct substantially affected New York
5 commerce and consumers.

6 (i) During the Class Period, each of Defendants named herein, directly, or indirectly and
7 through affiliates they dominated and controlled, manufactured, sold and/or distributed
8 Vehicle Carrier Services in New York.

9 (j) Plaintiffs and members of the Damages Class seek all relief available pursuant to N.Y.
10 Gen. Bus. Law § 349 (h).

11 167. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive
12 acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*

13 (a) Defendants agree to, and did in fact, act in restraint of trade or commerce by affecting,
14 fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices
15 at which Vehicle Carrier Services were sold, distributed or obtained in North Carolina
16 and took efforts to conceal their agreements from Plaintiffs and members of the Damages
17 Class.

18 (b) Defendants' price-fixing conspiracy could not have succeeded absent deceptive conduct
19 by Defendants to cover up their illegal acts. Secrecy was integral to the formation,
20 implementation and maintenance of Defendants' price-fixing conspiracy. Defendants
21 committed inherently deceptive and self-concealing actions, of which Plaintiffs could not
22 possibly have been aware. Defendants and their co-conspirators publicly provided pre-
23 textual and false justifications regarding their price increases. Defendants' public
24 statements concerning the price of Vehicle Carrier Services created the illusion of
25 competitive pricing controlled by market forces rather than supracompetitive pricing
26 driven by Defendants' illegal conspiracy. Moreover, Defendants deceptively concealed
27

1 their unlawful activities by mutually agreeing not to divulge the existence of the
2 conspiracy to outsiders.

3 (c) The conduct of Defendants described herein constitutes consumer-oriented deceptive acts
4 or practices within the meaning of North Carolina law, which resulted in consumer injury
5 and broad adverse impact on the public at large, and harmed the public interest of North
6 Carolina consumers in an honest marketplace in which economic activity is conducted in
7 a competitive manner.

8 (d) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services
9 price competition was restrained, suppressed, and eliminated throughout North Carolina;
10 (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at
11 artificially high levels throughout North Carolina; (3) Plaintiffs and members of the
12 Damages Class were deprived of free and open competition; and (4) Plaintiffs and
13 members of the Damages Class paid supra-competitive, artificially inflated prices for
14 Vehicle Carrier Services.

15 (e) During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier
16 Services in North Carolina, and Defendants' illegal conduct substantially affected North
17 Carolina commerce and consumers.

18 (f) During the Class Period, each of Defendants named herein, directly, or indirectly and
19 through affiliates they dominated and controlled, manufactured, sold and/or distributed
20 Vehicle Carrier Services in North Carolina.

21 (g) Plaintiffs and members of the Damages Class seek actual damages for their injuries
22 caused by these violations in an amount to be determined at trial and are threatened with
23 further injury. Defendants have engaged in unfair competition or unfair or deceptive acts
24 or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*, and, accordingly,
25 Plaintiffs and members of the Damages Class seek all relief available under that statute.
26

1 168. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive
2 acts or practices in violation of the Rhode Island Unfair Trade Practice and Consumer Protection Act,
3 R.I. Gen. Laws §§ 6-13.1-1, *et seq.*

4 (a) Members of this Damages Class purchased Vehicle Carrier Services for personal, family,
5 or household purposes.

6 (b) Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market
7 that includes Rhode Island, by affecting, fixing, controlling, and/or maintaining, at
8 artificial and non-competitive levels, the prices at which Vehicle Carrier Services were
9 sold, distributed, or obtained in Rhode Island.

10 (c) Defendants deliberately failed to disclose material facts to Plaintiffs and members of the
11 Damages Class concerning Defendants' unlawful activities and artificially inflated prices
12 for Vehicle Carrier Services. Defendants owed a duty to disclose such facts, and
13 considering the relative lack of sophistication of the average, non-business purchaser,
14 Defendants breached that duty by their silence. Defendants misrepresented to all
15 purchasers during the Class Period that Defendants' Vehicle Carrier Services prices were
16 competitive and fair.

17 (d) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services
18 price competition was restrained, suppressed, and eliminated throughout Rhode Island;
19 (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at
20 artificially high levels throughout Rhode Island; (3) Plaintiffs and members of the
21 Damages Class were deprived of free and open competition; and (4) Plaintiffs and
22 members of the Damages Class paid supra-competitive, artificially inflated prices for
23 Vehicle Carrier Services.

24 (e) As a direct and proximate result of Defendants' violations of law, Plaintiffs and members
25 of the Damages Class suffered an ascertainable loss of money or property as a result of
26 Defendants' use or employment of unconscionable and deceptive commercial practices as

1 set forth above. That loss was caused by Defendants' willful and deceptive conduct, as
2 described herein.

3 (f) Defendants' deception, including their affirmative misrepresentations and omissions
4 concerning the price of Vehicle Carrier Services, likely misled all purchasers acting
5 reasonably under the circumstances to believe that they were purchasing Vehicle Carrier
6 Services at prices set by a free and fair market. Defendants' affirmative
7 misrepresentations and omissions constitute information important to Plaintiffs and
8 members of the Damages Class as they related to the cost of Vehicle Carrier Services
9 they purchased.

10 (g) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in
11 violation of Rhode Island Gen. Laws. § 6-13.1-1, *et seq.*, and, accordingly, Plaintiffs and
12 members of the Damages Class seek all relief available under that statute.

13 169. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive
14 acts or practices in violation of 9 Vermont § 2451, *et seq.*

15 (a) Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market
16 that includes Vermont, by affecting, fixing, controlling, and/or maintaining, at artificial
17 and non-competitive levels, the prices at which Vehicle Carrier Services were sold,
18 distributed, or obtained in Vermont.

19 (b) Defendants deliberately failed to disclose material facts to Plaintiffs and members of the
20 Damages Class concerning Defendants' unlawful activities and artificially inflated prices
21 for Vehicle Carrier Services. Defendants owed a duty to disclose such facts, and
22 considering the relative lack of sophistication of the average, non-business purchaser,
23 Defendants breached that duty by their silence. Defendants misrepresented to all
24 purchasers during the Class Period that Defendants' Vehicle Carrier Services prices were
25 competitive and fair.

- (c) Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Vermont; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.
- (d) As a direct and proximate result of Defendants' violations of law, Plaintiffs and members of the Damages Class suffered an ascertainable loss of money or property as a result of Defendants' use or employment of unconscionable and deceptive commercial practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as described herein.
- (e) Defendants' deception, including their affirmative misrepresentations and omissions concerning the price of Vehicle Carrier Services, likely misled all purchasers acting reasonably under the circumstances to believe that they were purchasing Vehicle Carrier Services at prices set by a free and fair market. Defendants' misleading conduct and unconscionable activities constitutes unfair competition or unfair or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

FOURTH CLAIM FOR RELIEF
Unjust Enrichment
(on behalf of Plaintiffs and the Damages Class)

170. Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

171. As a result of their unlawful conduct described above, Defendants have and will continue to be unjustly enriched. Defendants have been unjustly enriched by the receipt of, at a minimum, unlawfully inflated prices and unlawful profits on Vehicle Carrier Services.

172. Defendants have benefited from their unlawful acts and it would be inequitable for

Defendants to be permitted to retain any of the ill-gotten gains resulting from the overpayments made by Plaintiffs and members of the Damages Class for Vehicle Carrier Services.

173. Plaintiffs and members of the Damages Class are entitled to the amount of Defendants' ill-gotten gains resulting from their unlawful, unjust, and inequitable conduct. Plaintiffs and members of the Damages Class are entitled to the establishment of a constructive trust consisting of all ill-gotten gains from which Plaintiffs and members of the Damages Class may make claims on a pro rata basis.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

- (a) The Court determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of the Classes;
- (b) That the unlawful conduct, contract, conspiracy, or combination alleged herein be adjudged and decreed: (i) An unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act; (ii) A per se violation of Section 1 of the Sherman Act; (ii) An unlawful combination, trust, agreement, understanding and/or concert of action in violation of the state antitrust and unfair competition and consumer protection laws as set forth herein; and (iv) Acts of unjust enrichment by Defendants as set forth herein.
- (c) Plaintiffs and members of the Damages Class recover damages, to the maximum extent allowed under such laws, and that a joint and several judgment in favor of Plaintiffs and members of the Damages Class be entered against Defendants in an amount to be trebled to the extent such laws permit;
- (d) Plaintiffs and members of the Damages Class recover damages, to the maximum extent allowed by such laws, in the form of restitution and/or disgorgement of profits unlawfully gained from them;

- 1 (e) Defendants, their affiliates, successors, transferees, assignees and other officers,
2 directors, partners, agents and employees thereof, and all other persons acting or claiming
3 to act on their behalf or in concert with them, be permanently enjoined and restrained
4 from in any manner continuing, maintaining or renewing the conduct, contract,
5 conspiracy, or combination alleged herein, or from entering into any other contract,
6 conspiracy, or combination having a similar purpose or effect, and from adopting or
7 following any practice, plan, program, or device having a similar purpose or effect;
- 8 (f) Plaintiffs and members of the Damages Class be awarded restitution, including
9 disgorgement of profits Defendants obtained as a result of their acts of unfair competition
10 and acts of unjust enrichment;
- 11 (g) Plaintiffs and members of the Classes be awarded pre-and post-judgment interest as
12 provided by law, and that such interest be awarded at the highest legal rate from and after
13 the date of service of this Complaint;
- 14 (h) Plaintiffs and members of the Classes recover their costs of suit, including reasonable
15 attorneys' fees, as provided by law; and
- 16 (i) Plaintiffs and members of the Classes have such other and further relief as the case may
17 require and the Court may deem just and proper.

18 **JURY TRIAL DEMANDED**

19 Plaintiffs hereby demand a trial by jury on those claims that can be tried to a jury.

20
21 DATED: July 30, 2013

Respectfully submitted,

22 **GIRARD GIBBS LLP**

23 By: 

24 Scott M. Grzenczyk (SBN: 279309)

Daniel C. Girard (SBN: 114826)

Dena C. Sharp (SBN: 245869)

Adam E. Polk (SBN: 273000)

GIRARD GIBBS LLP

601 California Street, 14th Floor

San Francisco, CA 94108

Telephone: (415) 981-4800

Facsimile: (415) 981-4846

Email: dcg@girardgibbs.com

*Counsel for Plaintiffs Tiffany Bui
and Nicholas Letourneau*